

NEW JERSEY STATUTES ANNOTATED
TITLE 45. PROFESSIONS AND OCCUPATIONS
CHAPTER 7. EMBALMERS AND FUNERAL DIRECTORS

SUBTITLE 1. PROFESSIONS AND OCCUPATIONS REGULATED BY STATE
BOARDS OF REGISTRATION AND EXAMINATION

45:7-1 to 45:7-23. Superseded

45:7-24, 45:7-25. Repealed by L.1953, c. 43, § 31, 32, eff. March 19, 1953

45:7-26. Superseded

45:7-27. Repealed by L.1953, c. 43, § 34, eff. March 19, 1953

45:7-28. Repealed by L.1971, c. 2, § 19, eff. Jan. 15, 1971

45:7-29 to 45:7-31. Superseded

45:7-32. Mortuary Science Act; short title

This act shall be known as the "Mortuary Science Act."

45:7-33. Practice of embalming and funeral directing declared occupation subject to strict regulation

In the interest of, and to better secure, the public health, safety and welfare and for the more efficient administration and supervision of sanitary codes and health regulations, the practice of mortuary science and the practice of embalming and funeral directing are hereby declared to be occupations charged with a high degree of public interest and subject to strict regulation and control.

45:7-34. Definitions

As used in this act:

(a) "Board" means the State Board of Mortuary Science of New Jersey.

(b) "Embalming" means the disinfecting or preservation of a dead human body, entirely or in part by the use of chemical substances, fluids or gases in the body, or by introduction of the same into the body by vascular or hypodermic injection, or by direct application into the organs or cavities.

(c) "Funeral directing" means (1) the engaging in or conducting or holding one's self out as being engaged in or conducting the preparation (other than embalming) for burial or disposal and the direction or supervision of burial or disposal of dead human bodies; or (2) maintaining, using or operating a mortuary; or (3) in connection with one's name or mortuary using the words "mortician" or "funeral director" or "undertaker" or any other words or title of like import or signification.

"Funeral directing" also means the engaging in or making, or holding one's self out as being engaged in or making, funeral arrangements, including at need funeral arrangements or preneed funeral arrangements; or the offering or holding one's self out as offering the opportunity to purchase or enroll in a prepaid funeral agreement. As used in this definition, "funeral arrangements," "at need funeral arrangements," "preneed funeral arrangements" and "prepaid funeral agreement" shall have the same meaning as they are defined in section 1 of P.L.1993, c. 147 (C. 45:7-82).

(d) "Mortuary science" means embalming and funeral directing, as the same are herein defined.

(e) "Embalmer" means a qualified person who practices or engages in embalming, as the same is herein defined.

(f) "Funeral director" includes "undertaker" and "mortician" and means a qualified person who practices or engages in funeral directing, as the same is herein defined.

(g) "Practitioner of mortuary science" means a qualified person who practices or engages in mortuary science, as the same is herein defined and who (1) shall be licensed under the provisions of this act as a practitioner of mortuary science, or (2) holds a license as both an embalmer and a funeral director under the provisions of any prior law or laws of this State, or (3) holds a license as an embalmer under the provisions of any prior law or laws of this State and shall have been licensed under the provisions of section 21 of P.L.1952, c. 340 (C. 45:7-52) as a funeral director, or (4) holds a license as a funeral director under the provisions of any prior law or laws of this State and shall have been licensed under the provisions of section 21 of P.L.1952, c. 340 (C. 45:7-52) as an embalmer.

(h) "Mortuary" means any place or premises devoted to or used in the care and preparation for burial, disposition, or transportation of dead human bodies, or any specifically designated location or address where any person or persons shall hold forth that he, she, or they are engaged in the practice of mortuary science, embalming or funeral directing, and shall mean and include any premises of any kind whatsoever in which mortuary science in any of its branches is practiced or in which more than 5 funerals may be conducted in any calendar year, except publicly owned buildings, places of worship and meeting places of fraternal organizations.

(i) "Registered trainee" means a person who is duly registered with the board and who is engaged in the State of New Jersey in learning to practice as a practitioner of mortuary science under the personal instruction and supervision of a person duly licensed as a practitioner of mortuary science and who has an annual case volume as hereinafter provided in section 18 of this act. [FN1]

[FN1] N.J.S.A. § 45:7-49.

45:7-35. State Board of Mortuary Science of New Jersey; appointment; vacancies; removal; Board of Embalmers and Funeral Directors abolished and functions transferred

There is hereby created in the Division of Professional Boards in the Department of Law and Public Safety a State Board of Mortuary Science of New Jersey, which board shall consist of 5 members, each of whom shall be a citizen of the United States and a resident of the State of New Jersey, duly licensed as a practitioner of mortuary science and shall have had a minimum of 5 consecutive years of experience and practice as a practitioner of mortuary science in this State immediately preceding his appointment. Subject to the provisions of section 45:1-2 of the Revised Statutes, members of the board shall be appointed annually by the Governor for a term of 3 years and shall not serve more than 2 successive terms. Each member shall hold office after the expiration of his term of office until his successor shall be duly appointed and qualified. Vacancies occurring by reason of the expiration of term of office shall be filled by the Governor in the calendar year in which any such vacancy occurs for a term of 3 years from July 1 of the year of appointment. Vacancies occurring by reason of the failure or neglect of the Governor to make appointments upon the expiration of terms of office as hereinabove provided and vacancies occurring for any other reason whatsoever shall be filled by the Governor for the unexpired term only.

Any member of the State Board of Mortuary Science of New Jersey may be removed from office by the Governor, for cause, upon notice and opportunity to be heard.

The Board of Embalmers and Funeral Directors of the State of New Jersey is hereby abolished and all of its functions, powers and duties, except as may be inconsistent with the provisions of this act, are hereby transferred to and vested in the State Board of Mortuary Science of New Jersey established hereunder. The State Board of Mortuary Science of New Jersey established hereunder and its functions, powers and duties shall in all respects be subject to the provisions of sections 30, 32, 33, 35, 37, 39 and 40 of chapter 439 of the laws of 1948.

[FN1]

[FN1] N.J.S.A. § 52:17B-30, 52:17B-32, 52:17B-33, 52:17B-35, 52:17B-37, 52:17B-39 and 52:17B-40.

45:7-36. Repealed by L.1979, c. 432, § 5, eff. Feb. 14, 1980

45:7-37. Oath of members of board; president and secretary; rules and regulations

Each member of the board, before entering upon his duties and within thirty days after receiving notice of his appointment, shall take and subscribe an oath of office such as is provided for other State officials. Upon the failure of a member of the board to take the oath of office as provided herein, a vacancy in the membership of the board shall then exist which shall be filled by the Governor as provided in section four. [FN1] The board shall annually select from its membership a president and secretary, who shall serve until their successors shall be elected and qualified. The board is authorized and empowered to adopt

and promulgate such rules and regulations, not inconsistent with this act, as it may deem expedient for the transaction of its business and for the purpose of efficiently enforcing the provisions of this act.

[FN1] N.J.S.A. § 45:7-35.

45:7-38. Rules and regulations

The board is authorized and empowered to adopt such rules and regulations, not inconsistent with this entire act or any amendment or supplement which may hereafter be adopted, as shall be reasonably proper and advisable for the promotion or improvement of the standards of service, protection and practice to be followed in the practice of mortuary science, embalming and funeral directing by individuals, corporations, partnerships and associations in the State of New Jersey, and for and in the interest, preservation and improvement of the public health, morals, safety and welfare.

In addition to the powers otherwise herein granted to the board, the board is specifically empowered to adopt rules and regulations concerning the following:

- (a) the manner in which a mortuary or funeral establishment is conducted,
- (b) establish minimum requirements for a preparation room and as to the manner in which it shall be maintained,
- (c) issuance of lists of licensees,
- (d) trainees, apprentices and preceptors,
- (e) unethical or unprofessional conduct,
- (f) practice of mortuary science by individuals, corporations, partnerships and associations.

45:7-39. Seal

The board shall adopt a seal, of which the secretary shall have the care and custody, and all courts of this State shall take judicial notice of such seal.

45:7-40. President's duties

The president of the board shall preside at all meetings and he shall exercise and perform all duties and functions incidental to the office of president of the board.

45:7-41. Secretary's duties; compensation; bond

The secretary shall keep a record of all proceedings of the board, shall exercise and perform all duties and functions incidental to his office and such other duties and functions as may be assigned by the board. He shall receive such compensation for his services, within the limits of available appropriations

therefor, and shall give such bond for the faithful performance of his duties as the board may, with the approval of the Attorney General, determine.

The secretary of the board shall keep a record in which shall be registered the name and professional address of every person to whom licenses have been granted in accordance with the provisions of this act or in accordance with the provisions of prior laws of this State, the number and date of such license and the date of each renewal thereof.

The secretary shall, whenever requested so to do, certify over the seal of the board, whether the records kept by the board show or fail to show a license to carry on the practice of mortuary science or of embalming or funeral directing, or both, or the issuance of any renewal of any such licenses or whether any person has or has not a license in full force and effect. The fee for any such certificate shall be one dollar (\$1.00). Any such certificate, whether made by the secretary upon such request or for use in proceedings before the board or in which the board may be a party, shall be prima facie evidence of the facts therein stated.

In the month of January of each and every year the secretary of said board shall supply to each licensed practitioner of mortuary science, to each licensed embalmer and to each licensed funeral director a list of all practitioners of mortuary science, embalmers, and funeral directors holding a license under this act or under prior laws of this State, giving the names of such persons, their professional address and the number and nature of their licenses.

45:7-43. Assistants and employees of board; executive secretary

The board may, subject to the approval of the Attorney General, appoint, employ or remove such assistants and employees as may be necessary to carry out the provisions of this act. The board may, subject to the approval of the Attorney General, appoint and employ an executive secretary who shall serve without term but who may be removed from office by the Attorney General, for cause, upon notice and opportunity to be heard at a public hearing. The duties of the executive secretary shall be determined by the board and the board shall fix the compensation of its executive secretary, assistants and employees, subject to the approval of the Attorney General, within the limits of available appropriations therefor. Such executive secretary shall not be subject to the provisions of Title 11 of the Revised Statutes of this State. No such executive secretary, employee or assistant shall engage in the practice of mortuary science, embalming or funeral directing, nor shall he in any way be connected with the work of a practitioner of mortuary science, embalming or funeral directing.

45:7-44. Repealed by L.1979, c. 432, § 6, eff. Feb. 14, 1980

45:7-45. Compensation; expenses

The members of the board shall receive twenty-five dollars per diem for time spent in discharge of their duties and in addition shall be entitled to have and receive their necessary traveling expenses.

45:7-46. Fees, penalties and other moneys; disposition

All fines, fees, penalties and other moneys derived from the operation of this act, or payable pursuant to the provisions of this act or any other law to the board shall be collected by the secretary of the board and shall be paid into the State treasury, through the Attorney-General.

45:7-47. License required

No person shall engage in the practice of mortuary science, embalming or funeral directing, unless he shall have been duly licensed so to do, by the board, under the provisions of this act or under the provisions of any prior law of this State and unless such license is unrevoked and in full force and effect; provided, that this shall not apply to a registered trainee working under the direct supervision of a practitioner of mortuary science.

45:7-48. Only a single license to be issued to any applicant

The board shall grant only a single license as a practitioner of mortuary science to any applicant, and any person shall hold a license as a practitioner of mortuary science issued under the provisions of this act before being permitted to practice mortuary science or embalming or funeral directing in this State.

45:7-49. Examination; qualifications of applicants; training and experience

(a) Every person desiring to enter into the practice of mortuary science, before being licensed by the board so to do:

(1) Shall have passed an examination to be conducted by the board to determine his qualifications and fitness therefor. Such examination, the scope, character and content of which shall be determined by the board, shall be the same for all candidates at each examination, and shall include the following subjects: anatomy; physiology; pathology; chemistry; disinfection; hygiene; sanitary science; bacteriology; dissection; the care, preservation, embalming, transportation, burial or disposal of dead human bodies, including those dead as a result of contagious and infectious diseases; the signs of death and the manner in which death may be determined; laws and rules governing vital statistics and the preparation and transportation for burial of dead human bodies; the provisions of this act and of the rules and regulations adopted by the board; professional ethics; mortuary accounting; and such other subjects as the board may determine, by rule or regulation, to be necessary, proper or reasonably calculated to establish the qualifications and fitness of the applicant. Such examinations shall be in writing and shall be held at least once in each year, and oftener if the board shall so determine by rule or regulation, at such times and places as may be fixed by the board. In addition to the written examination herein provided for, the examination of each applicant shall include, wherever possible, an actual demonstration on a cadaver of the embalming proficiency and qualifications of the applicant.

(2) Shall have completed 2 years of practical training and experience as a registered trainee in regular, steady, bona fide full-time service of a grade and character satisfactory to the board, in the State of New Jersey, with a person duly

licensed as a practitioner of mortuary science under this act or as both an embalmer and funeral director under any prior law of this State and whose annual case volume shall be equal to at least 25 cases, and shall have assisted in embalming at least 75 bodies; and shall have satisfactorily completed a minimum of 2 academic years of instruction in a college or university approved by the State Department of Education and 1 year of instruction in a school of mortuary science approved by the State Board of Mortuary Science; except that a person who has satisfactorily completed 3 academic years of instruction in such a college or university and 1 year of instruction in such an approved school of mortuary science need only have completed 1 year of practical training and experience as a registered trainee. Provided, however, that the requirement for 2 years' academic instruction in a college or university shall not apply to a trainee registered prior to the effective date of this act and serving 3 years as a registered trainee. Not more than 1 trainee shall be registered at 1 time in 1 establishment, except that 2 trainees may be permitted if there are 2 or more licensees in the same establishment. The board is authorized and empowered to prescribe rules and regulations establishing minimum courses of college or university instruction; to insure that each trainee receives satisfactory and efficient training and experience which may provide for the periods that may be credited toward the required year of training and experience, the nature, character and extent of the services to be performed by the trainee, for such practical and actual experience in mortuary science and assisting in the same as it shall determine and for the making of such reports by the trainee and by the licensee with whom he is registered as may be advisable and for such other qualifications in the applicant as may be reasonably calculated to insure and protect the public health, morals, safety and welfare;

(3) Shall have, upon commencing his period of training and experience as provided in subdivision (a)(2) of this section registered as a trainee with the board, upon a form to be provided by the board, and has paid to the board a registration fee of \$50.00, and has received from the board a certificate as a registered trainee;

(4) Shall have been a resident of the State of New Jersey continuously during the period of his training and experience; and

(5) Shall have passed his twenty-first birthday.

(b) An applicant who meets the requirements of section 19 of this act [FN1] shall be admitted to the examinations prescribed in subdivision (a)(1) of this section but a license to enter into the practice of mortuary science shall not be issued or granted to any such applicant by the board unless and until such applicant has completed the period of practical training and experience as a registered trainee required by subdivision (a)(2) of this section.

[FN1] N.J.S.A. § 45:7-50.

45:7-49.1. Licensure of persons holding valid license from other states; examination and fees

After successful completion of the law portion of the examination conducted by the board pursuant to section 18 of P.L.1952, c. 340 (C.45:7-49), and upon payment to the board of a fee and the submission of a written application on forms provided by it, the board may issue, at its discretion, a practitioner of mortuary science license to a person who holds a valid license or certification issued by another state or possession of the United States or the District of Columbia and who has met education and experience requirements substantially equivalent to the requirements of P.L.1952, c. 340 (C.45:7- 32 et seq.), and who has been engaged in the practice of mortuary science in that state, possession or district with a valid license or certification for two years immediately prior to application; except that the board may issue, at its discretion, a practitioner of mortuary science license to an applicant who does not meet the practical training and experience requirements of paragraph (2) of subsection a. of section 18 of P.L.1952, c. 340 (C.45:7- 49) but otherwise meets the requirements specified in this section if the applicant has been engaged in the practice of mortuary science for not less than five years immediately prior to application.

45:7-50. Examination fees; evidence of qualifications

No person shall be examined by the board except upon payment of a fee of \$50.00 for the initial examination and a fee of \$25.00 for each re- examination. Each applicant, before being admitted to an examination, shall first submit to the board

(1) evidence verified by oath and satisfactory to the board that:

(a) He is a citizen of the United States and has been a resident of the State of New Jersey for a period of at least 6 months prior to the date of the examination;

(b) He is of good moral character and at least 21 years of age;

(2) a certificate from the Commissioner of Education of this State showing that before entering an embalming college or college of mortuary science he had obtained an academic education consisting of a 4 years' course of study in an approved public or private high school or the equivalent thereof, he has (a) satisfactorily completed a minimum of 2 years of academic instruction in a college or university approved by the New Jersey Department of Education, satisfactorily completed a minimum of 1 year of academic instruction in a school of mortuary science approved by the State Board of Mortuary Science; or (b) satisfactorily completed a minimum of 3 years of academic instruction in such a college or university, satisfactorily completed a minimum of 1 year of academic instruction in such a school of mortuary science; and

(3) a certificate from a licensed practitioner of mortuary science in the State of New Jersey that he has served a 1-year or 2-year period of practical training as a registered trainee under such practitioner, whichever is applicable; such period of practical training as a registered trainee may be served either concurrently with the college or university courses, during summer vacations, or subsequent

to the completion of the college or academic course, at the option of the registrant.

45:7-51. Additional examinations

If an applicant fails to pass the examination, he may be reexamined at the next or any subsequent regular examination.

45:7-52. Repealed by L.1960, c. 184, § 19, eff. Jan. 18, 1961

45:7-53. Licenses; signing by board members; expiration

All licenses and renewals thereof issued pursuant to the provisions of this act shall be signed by the members of the board and shall have the seal of the board affixed thereto, and shall expire and terminate on the first day of September next following the date of their issue, unless sooner revoked and cancelled.

45:7-54. Prior laws, licenses issued under; renewal

Any person holding a license or licenses under this act or under any prior law of this State shall have the same renewed upon making and filing with the board an application therefor upon forms provided by the board and upon payment of a renewal fee of \$15.00; provided, that any person neglecting or failing to have his license renewed, as above, shall have the same renewed by making application therefor and upon payment of a revival fee of \$75.00 in addition to the renewal fee of \$15.00.

45:7-55. Certificate of registration for each mortuary operated, maintained or used; fee

Every individual, partnership, or corporation which operates or maintains within this State a mortuary or which in the usual and regular course of his or its practice makes use of a mortuary owned, operated, or maintained by another shall annually apply to the board for a certificate of registration for each mortuary operated, maintained, or used by the applicant and shall report under oath any facts requested by the board, and such individual, partnership, or corporation shall pay an annual registration fee of \$25.00 for each such mortuary. Upon verification of the statements thus reported and the receipt of the requisite fee, the board shall issue a certificate of registration which shall bear date of January 1 for the year of issue and shall expire on December 31 of such year. No mortuary shall be operated, maintained, or used at any location by any person, firm or corporation at any location not specified in a certificate of registration issued under this section.

45:7-56. Persons entitled to practice under prior laws

Any person now entitled to practice embalming or funeral directing or both under the provisions of any prior law of the State of New Jersey shall continue to be entitled to practice or engage in the same notwithstanding the enactment of this act, and the validity of any license, or renewals thereof, to practice embalming or funeral directing, or both, under any such prior law, shall not be affected by the

enactment of this act, but all such persons shall in all other respects be subject to the provisions of this act.

45:7-57, 45:7-58. Repealed by L.1960, c. 184, § 19, eff. Jan. 18, 1961

45:7-57, 45:7-58. Repealed by L.1960, c. 184, § 19, eff. Jan. 18, 1961

45:7-59. Death of licensee

The license of any practitioner of mortuary science or of any embalmer and funeral director, or either, shall terminate upon his decease.

45:7-60. Repealed by L.1960, c. 184, § 19, eff. Jan. 18, 1961

45:7-61. Operating and maintaining mortuary; conditions

No person shall operate, maintain or use a mortuary within this State unless:

(a) He, they or it shall annually register with the board in accordance with the provisions of section twenty-four of this act; [FN1]

(b) The certificate of registration issued by the board shall be conspicuously displayed within the establishment;

(c) The licenses of the individual owner, of all partners, or of the manager of the establishment in all cases where the establishment is not managed by a licensed individual owner or licensed partners, shall be conspicuously displayed within the establishment;

(d) It shall be under the immediate and personal supervision, direction, management, and control of a person duly licensed as a practitioner of mortuary science, under the provisions of this act, or of a person duly licensed as a funeral director under the provisions of this act or of any prior law of this State; and all funeral directing shall be under the immediate and personal supervision, direction, management, and control of a person duly licensed as a practitioner of mortuary science, under the provisions of this act, or of a person duly licensed as a funeral director under the provisions of this act or of any prior law of this State;

(e) Its construction, maintenance and operation shall conform to the rules and regulations of the board promulgated to safeguard and promote the public health, safety, morals and welfare.

[FN1] N.J.S.A. § 45:7-55.

45:7-62. Repealed by L.1979, c. 432, § 1, eff. Feb. 14, 1980

45:7-63. Permission to inject fluid into body required, when; arsenical or other poisonous agents

No person shall inject any fluid or substance into any cavity or artery of the body of any person who has come to a sudden, violent or untimely death, or of any

person found dead, the manner of whose death is not known, until permission is obtained from the county medical examiner of the county in which the dead body lies. No person shall employ, for the purpose of the practice of mortuary science, funeral directing or embalming, any arsenical or other poisonous agent which may by its presence in the viscera prevent the detection of criminal usage of the poisonous agent before the death of the individual occurred; but this provision shall not prohibit the use by any association incorporated under article 4 of chapter 9 of Title 45 of the Revised Statutes, [FN1] of any substance for the preservation of dead bodies which have legally come into its possession.

[FN1] N.J.S.A. § 45:9-43 et seq.

45:7-64. Embalming compounds

The sale or use for embalming purposes within the State of New Jersey of any fluid containing arsenic, zinc, mercury, copper, lead, silver, antimony, chloral, or cyanogen, or any compound containing any of said substances, or any poisonous alkaloid is prohibited. The board shall have power, by rules and regulations, to provide for appropriate tests to be made of all brands of embalming compounds sold or used within this State or intended for sale or use within this State, and shall disapprove for such sale or use any such compounds that, upon such tests, are determined to contain any substance herein prohibited. The board shall have power to publish a list of such compounds that, upon such tests, are determined to comply with the provisions of this section. Nothing in this section contained shall prohibit the use by any association incorporated under article four of chapter nine of Title 45 of the Revised Statutes, [FN1] of any substance for the preservation of dead bodies which have legally come into its possession.

[FN1] N.J.S.A. § 45:9-43 et seq.

45:7-65. Contagious diseases; report to local health officer

Every practitioner of mortuary science, embalmer or funeral director shall report to the local health officer all contagious cases in which he may be called, within twelve hours after death or as soon as may be after being called.

45:7-65.1. Service of food or refreshments on mortuary premises

In the interests of safeguarding public health, no person who operates, maintains, or uses a mortuary within this State shall serve, or permit or suffer to be served on or about the mortuary premises any food or refreshments in conjunction with any funeral or in conjunction with any service offered or provided for the preparation and disposal of dead human bodies.

45:7-65.2. Branch mortuaries

No person shall operate, maintain, or use a branch mortuary within this State unless it is under the actual personal supervision, direction, management and actual control of a person who is duly licensed as a practitioner of mortuary science or as a funeral director.

45:7-65.3. Soliciting sale of services

a. No person, firm or corporation , or solicitors, agents , canvassers, employees or other persons acting on behalf of that person, firm or corporation, for the purpose of selling or contracting to sell or provide any service or services commonly furnished or performed by an embalmer or funeral director, including, but not limited to, prepaid funeral agreements and the making of at need or preneed funeral arrangements, shall:

(1) Directly or indirectly solicit persons in hospitals, rest homes, nursing homes or similar health care facilities by telephone or in person without first having been specifically requested to do so by that person;

(2) Directly or indirectly employ any agent, employee, assistant, independent contractor or other person to solicit persons in hospitals, rest homes, nursing homes or similar health care facilities by telephone or in person without first having been specifically requested to do so by that person;

(3) Solicit relatives of persons whose death is apparently pending or whose death has recently occurred for the purpose of providing any of those services for that person;

(4) Solicit, accept, offer to pay or pay any commission, bonus or rebate in consideration of recommending or causing any person to use the services of a particular funeral director, or the services of a particular crematory, mausoleum or cemetery; or

(5) Solicit persons at their residences in person or by telephone unless that solicitation is in response to a previous request for or expression of interest in a funeral director's services made by the person solicited or by a member of that person's family.

b. Nothing in this section shall be construed to restrict the right of a funeral director or an agent or employee of the funeral director, to communicate, by direct mail or in any other way not specifically prohibited by this section, with persons or provide them with information regarding the services of the funeral director, or to solicit the business of any person responding to that communication and explicitly requesting further information by personal visit or telephone, or otherwise initiating further discussion of those services, or to provide services or information to persons in connection with services previously rendered.

c. Nothing in this section shall be construed to prohibit general advertising by a funeral director.

d. Nothing in this section shall be deemed to prohibit the payment of commissions, bonuses or other compensation to a licensed cemetery salesman for the sale of cemetery goods or services.

e. As used in this section, "at need funeral arrangements," "preneed funeral arrangements" and "prepaid funeral agreement" shall have the same meaning as they are defined in section 1 of P.L.1993, c. 147 (C. 45:7-82).

45:7-65.4. Placement of remains in coffin, casket or other container of more than one deceased person; exception

It shall be unlawful for a funeral director to place the remains of more than one deceased person or stillborn infant in a coffin, casket, or other container for the purpose of interment, unless other written directions have been given by the decedent or a court of competent jurisdiction, or the relative or relatives of the decedent in the following order:

- (1) Surviving spouse;
- (2) A majority of surviving children of the decedent or the surviving child if one;
- (3) The surviving parent or parents of the decedent;
- (4) A majority of the brothers and sisters of the decedent if no child or parent is living; or
- (5) Other next of kin according to the degree of consanguinity.

45:7-65.5. Violations; penalty

Any person who violates this act shall be guilty of a misdemeanor and shall remain liable for any other penalties which may be imposed by the board, where applicable.

45:7-66 to 45:7-71. Repealed by L.1979, c. 432, §§ 1, 6, eff. Feb. 14, 1980

45:7-72. Repealed by L.1995, c. 192, § 3, eff. Aug. 2, 1995

45:7-72.1. Continuing education requirement for license renewal

The State Board of Mortuary Science of New Jersey shall require each person licensed to practice mortuary science, embalming or funeral directing, as a condition for biennial license renewal pursuant to section 23 of P.L.1952, c. 340 (C. 45:7-54), to complete any continuing education requirements imposed by the board pursuant to section 2 of this act.

45:7-72.2. Continuing education; waivers; standards; review and approval

a. The board shall implement a program of continuing education as a condition of license renewal for licensees under its jurisdiction and may, in its discretion, waive all or part of the continuing education requirement for any biennial licensing period. The board shall establish standards for continuing education, including the subject matter and content of courses of study, the selection of instructors, and the number and type of continuing education credits required of a licensee as a condition for biennial license renewal.

b. The board may establish a system for reviewing and approving private sponsors of continuing education courses, seminars or programs which may be utilized to provide continuing education to licensees in satisfaction of the requirements imposed by this act.

45:7-73. Report of names of licensees to State Department of Health; identification cards

The board shall report to the State Department of Health the name and residence of every person to whom it may issue a license. The board shall issue to each person granted a license an identification card stating that the holder thereof has received a license and is carrying on the practice of mortuary science, or of funeral directing or embalming. The proper holder of such a card shall have the same right to carry on the practice of mortuary science, or of funeral directing or embalming as those whose names appear on file in the office of the registrar of vital statistics in each municipality.

45:7-73.1. Agreements with other states for purpose of removing, transporting and burying bodies

The board may, in its discretion, enter into an agreement with the corresponding licensing authority of any other State to permit a person duly registered and licensed as a practitioner of mortuary science or a funeral director in either State to enter into the other State for the purpose of removing, transporting and burying dead human bodies and directing funerals in the same manner as if he were registered under the laws of such other State, except that such person shall not maintain an establishment, advertise or hold himself out, directly or through any agent or agency or otherwise, as a practitioner of mortuary science or a funeral director other than in the State in which he is registered and licensed.

45:7-74. Rules and regulations; distribution; statements on licenses

The rules and regulations adopted by the board pursuant to this act shall be printed and copies thereof shall be sent by the board to any person licensed under this act or under any prior law, who makes application therefor, and, upon payment of a fee of one dollar (\$1.00) to any other person who makes application therefor, and shall also be open for inspection at the office of the board. Every license and renewal granted under this act shall contain a statement to the effect that the practice licensed must be conducted in accordance with the law and with the rules and regulations of the board adopted in pursuance thereto, and that a copy of such rules and regulations may be obtained upon request at the office of the board.

45:7-75 to 45:7-78. Repealed by L.1979, c. 432, §§ 5, 6, eff. Feb. 14, 1980

45:7-79. Partial invalidity

In the event that any section, paragraph, clause, sentence or part of this act shall for any reason be adjudged to be invalid by any court of competent jurisdiction, such judgment shall not impair the remainder thereof, but shall be

confined strictly in its operation to the particular clause, section, paragraph or part thereof so held to be invalid.

45:7-80. Repeal

All acts and parts of acts inconsistent with the provisions of this act are, to the extent of such inconsistency, hereby repealed.

45:7-81. Effective date

This act shall take effect July first, one thousand nine hundred and fifty- two.

45:7-82. Definitions

As used in this act, in P.L.1952, c. 340 (C. 45:7-32 et seq.) and in section 18 of P.L.1960, c. 184 (C. 45:7-65.3):

"Assigned funeral insurance policy" means any insurance policy or annuity contract that is not a newly issued funeral insurance policy, but that, at the time an assignment was made of some or all of its proceeds, was intended to provide funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

"At need funeral arrangements" means funeral arrangements made with the survivors or personal representative of a person who has already died for that person's funeral.

"Board" means the State Board of Mortuary Science of New Jersey.

"Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.

"Deliver" or "delivery" means the conveyance of actual control and possession of prepaid funeral goods that have been permanently relinquished by a provider, or other person, firm or corporation, or an agent thereof, to the purchaser or person paying the moneys, or personal representative of the intended funeral recipient. Delivery has not been made if the provider, or other person, firm or corporation, or an agent thereof:

(1) Arranges or induces the purchaser or person paying the moneys to arrange for the storage or warehousing of prepaid funeral goods ordered pursuant to a prepaid funeral agreement, with or without evidence that legal title has passed; or

(2) Acquires or reacquires actual or constructive possession or control of prepaid funeral goods after their initial delivery to the purchaser or person paying the moneys or personal representative of the intended funeral recipient.

This definition of delivery shall apply to this term as used in this act, notwithstanding the provisions set forth in the Uniform Commercial Code, Title 12A of the New Jersey Statutes.

"Funeral arrangements" means funeral and burial plans made through a mortuary, including the selection of plans for the furnishing of funeral goods and services pursuant to a completed plan of bodily disposition and the act of offering the opportunity to purchase or to enroll in a prepaid funeral agreement by the mortuary.

"Funeral insurance policy" means any newly issued funeral insurance policy or assigned funeral insurance policy.

"Funeral trust" means a commingled or non-commingled account held in a pooled trust or P.O.D. account, established in accordance with P.L.1957, c. 182 (C. 2A:102-13 et seq.) or P.L.1985, c. 147 (C. 3B:11-16 et al.), which is intended as the depository for cash payments connected with a prepaid funeral agreement.

"Guaranteed price agreement" means a prepaid funeral agreement under which, in exchange for the proceeds of a funeral trust or funeral insurance policy, the provider agrees to provide the stated goods and services in the future, regardless of whether or not the retail value of those goods and services exceeds the funds available from the funeral trust or funeral insurance policy at the time of death of the intended funeral recipient.

"Intended funeral recipient" means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.

"Newly issued funeral insurance policy" means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or was explicitly marketed for the purpose of providing, funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

"Non-guaranteed price agreement" means a prepaid funeral agreement funded with a funeral trust or funeral insurance policy, the proceeds of which the provider will apply to the current retail value of the prepaid funeral goods and services previously selected at the time of death of the intended funeral recipient, but which agreement shall not bind the provider to provide the goods and services if the value thereof exceeds the funds available at the time of death of the intended funeral recipient.

"Payable on death account" or "P.O.D. account" means an account payable, on request to the purchaser or intended funeral recipient of a prepaid funeral agreement during the lifetime of the intended funeral recipient and on his death, to a provider of funeral goods and services.

"Pooled trust" means a pooled trust account established pursuant to P.L.1985, c. 147 (C. 3B:11-16 et al.).

"Preneed funeral arrangements" means funeral arrangements made with an intended funeral recipient or his guardian, agent or next of kin, for the funeral of the intended funeral recipient.

"Prepaid funeral agreement" means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

"Prepaid funeral goods" means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or other primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.8A:1-2, memorials as defined in N.J.S.8A:1-2, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items, which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods shall not mean the sale of interment spaces and related personal property offered or sold by a cemetery company as provided for in N.J.S.8A:1-1 et seq.

"Prepaid funeral services" means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral directing services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S.8A:1-1 et seq.

"Provider" means a person, firm or corporation duly licensed and registered pursuant to the "Mortuary Science Act," P.L.1952, c. 340 (C. 45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent thereof and so licensed:

(1) Operating a duly registered mortuary in accordance with P.L.1952, c. 340 (C. 45:7-32 et seq.) and the regulations promulgated thereunder;

(2) Having his or its business and practice based within the physical confines of the registered mortuary; and

(3) Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

"Purchaser" means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.

"Retail installment contract" means an agreement to pay the purchase price of goods or services in two or more installments over a period of time.

"Statement of funeral goods and services" means the itemized written statement required to be given to each person making funeral arrangements in accordance with the regulations of the Federal Trade Commission (16 C.F.R. 453.2) and the board (N.J.A.C.13:36-9.8).

45:7-83. Requirements for sale of need, preneed, and prepaid funeral arrangements

a. No person, firm or corporation shall sell, or offer to sell, or make or offer to make at need funeral arrangements, preneed funeral arrangements or prepaid funeral agreements, unless that person, firm or corporation:

(1) is duly licensed and registered pursuant to the "Mortuary Science Act," P.L.1952, c. 340 (C. 45:7-32 et seq.), to engage in the business and practice of funeral directing or mortuary science; and

(2) has his or its business and practice based within the physical confines of the registered mortuary.

b. No person, firm or corporation, shall engage in the business and practice of funeral directing or mortuary science at any permanent facility that is not a registered mortuary.

c. Notwithstanding the foregoing, this section shall not be construed to prohibit an otherwise qualified person, firm or corporation from acting as a provider operating under a trade name or other assumed name or through a subsidiary of a corporation duly licensed and registered pursuant to P.L.1952, c. 340 (C. 45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science.

45:7-84. Providers of prepaid funeral agreements; conditions of sale

No provider shall enter into, or offer to enter into, a prepaid funeral agreement, or provide or offer to provide a funeral trust or funeral insurance policy in connection therewith, unless:

a. At the same time he makes preneed funeral arrangements for the intended funeral recipient on a statement of funeral goods and services;

b. He meets all requirements with respect to the making of at need funeral arrangements as otherwise required by law;

c. The insurance policy or annuity contract to be provided or offered as a newly issued funeral insurance policy complies with the provisions of section 24 of P.L.1993, c. 147 (C. 17B:17-5.1);

d. If a newly issued funeral insurance policy is provided or offered, he is duly licensed as an insurance producer pursuant to P.L.1987, c. 293 (C. 17:22A-1 et seq.).

45:7-85. Prepaid funeral agreements; proper signatories; contents; right of revocation; alternative funeral arrangements; source of funds

Every prepaid funeral agreement executed in this State shall:

a. Be signed by the provider, and the purchaser or the intended funeral recipient or the intended funeral recipient's guardian, agent or next of kin.

b. Include at least the following information:

(1) the name, address and telephone number of the mortuary to be utilized;

(2) the name of the individual licensee acting as or on behalf of the provider and the license number of that individual;

(3) the purchaser's name and address;

(4) the name of the intended funeral recipient;

(5) whether the agreement is a guaranteed price agreement or non-guaranteed price agreement, which term, as applicable, shall be defined in the agreement in accordance with section 1 of this act;

(6) how the agreement is to be funded; and

(7) a statement of funeral goods and services or, if not included as part of the agreement, that a statement of funeral goods and services shall be provided.

c. Provide that all funeral arrangements are revocable, and that all funeral funding arrangements are severable from those funeral arrangements by the purchaser if alive, and if not, then by the intended funeral recipient, where they are different persons. Upon the death of both the purchaser and the intended funeral recipient, the intended funeral recipient's next of kin, in the order provided in N.J.S.8A:5-18, shall have the right to revoke the funeral arrangements and to sever the funeral funding arrangements from the funeral arrangements. Notwithstanding the above, a prepaid funeral agreement may provide that the

funeral trust shall be irrevocable during the lifetime of the intended funeral recipient pursuant to section 1 of P.L.1991, c. 502 (C.2A:102-16.1) or section 1 of P.L.1999, c. 193 (C.2A:102-19).

In those instances where a revocable prepaid funeral agreement is revoked, the moneys used to fund the agreement shall be paid to the purchaser, if alive, and if not, then to the personal representative or estate of the deceased purchaser if the agreement is funded through a trust or, if the agreement is funded through a funeral insurance policy, to the named beneficiaries on the insurance policy or annuity.

d. Provide that, unless otherwise specified therein, a prepaid funeral agreement anticipates the provision of prepaid funeral goods and services in the area served by the provider. The agreement shall further provide that, if the intended funeral recipient's place of death is in a location other than that served by the provider, alternative funeral arrangements will be necessary.

e. Provide for the provider's substitution of any goods or services to be furnished or rendered thereunder for goods of equal quality, value and workmanship or services of equal quality and value in the event of the unavailability of any goods or services set forth in the agreement. Any changes in the price of the agreement resulting from such substitution of goods or services shall be reflected in the statement of funeral goods and services rendered.

f. Provide that, in the case of an agreement funded through a funeral trust, if the purchaser predeceases the intended funeral recipient where they are different persons, then the intended funeral recipient shall automatically assume the legal right to administer the funeral trust as purchaser, including the right to withdraw any and all funds held in the funeral trust, along with all other rights formerly held by the purchaser.

g. Provide that, upon the death of the intended funeral recipient, the provider shall calculate the current retail prices of the preneed funeral arrangements, and:

(1) in the case of a non-guaranteed prepaid funeral agreement, if there are insufficient funds to pay for the current retail prices of the prepaid funeral goods and services requested, the provider shall consult with the appropriate representative for the supplementation of the funds or the modification of the funeral arrangements set forth in the agreement prior to performance under the agreement.

(2) in the case of an agreement funded through a funeral trust, whether a guaranteed or non-guaranteed price agreement, if the provider determines that the funds or proceeds available exceed the current retail prices of the prepaid funeral goods and services to be provided, the surplus funds shall be paid to the purchaser, if alive, and if not, then to the personal representative of the estate of the deceased.

(3) in the case of an agreement funded through a funeral insurance policy, whether a guaranteed or non-guaranteed price agreement, if the provider determines that the funds or proceeds available exceed the current retail prices

of the prepaid funeral goods and services to be provided, the surplus funds shall be paid to the named beneficiaries of the funeral insurance policy.

h. Provide that, upon completion of performance under the agreement, the provider shall present a final bill.

i. Provide that if a prepaid funeral agreement is a guaranteed price agreement, the price guarantee is a guarantee and liability of the provider and not the guarantee and liability of the insurer issuing the funeral insurance policy when a funeral insurance policy is used or the trust depository administering the funeral trust when a funeral trust is used.

45:7-86. Additional required contents of agreements; cancellation provisions

In addition to those provisions required in section 4 of this act, [FN1] agreements connecting a funeral insurance policy to a prepaid funeral agreement shall provide that:

a. Cancellation of the funeral arrangements will not cancel or otherwise invalidate the funeral insurance policy;

b. Cancellation, withdrawal of, or loans made against, the proceeds or cash value of the policy shall void any price guarantees and indicate, therefore, the likelihood that inadequate funds will exist to pay for the original arrangements as intended; and

c. Cancellation of the prepaid funeral agreement will not result in the refund of premiums paid.

[FN1] N.J.S.A. § 45:7-85.

45:7-87. Return of prepaid funeral goods, services or money upon cancellation of agreement

In addition to the other requirements of this act, with respect to prepaid funeral agreements and the preneed funeral arrangements made in connection therewith:

a. If the provider is unable to provide the prepaid goods and services requested due to the revocation of the prepaid funeral agreement or funding arrangements or due to impossibility of performance, the moneys used to fund the agreement shall be paid to the purchaser, if alive, and if not, then to the personal representative of the deceased purchaser or his estate if the agreement is funded through a funeral trust or, if the agreement is funded through a funeral insurance policy, to the named beneficiaries of the policy.

b. As a condition to the performance of the agreement, the provider or an agent thereof shall deliver the prepaid funeral goods to the purchaser or personal representative of the intended funeral recipient, regardless of whether the agreement specifically provides therefor.

c. Unless the intended funeral recipient's next of kin inquires about the prepaid funeral goods and services arranged for, the provider shall be entitled to presume that the arrangements on file are those intended.

45:7-88. Provider of funeral insurance prohibited from naming self as beneficiary of a policy

No provider shall knowingly permit, in conjunction with a prepaid funeral agreement, the naming of himself or itself as beneficiary of a policy, except that nothing in this section shall be construed to prohibit the assignment of proceeds to a provider as payment for a funeral bill, or such other mechanism that provides payments to providers for the goods or services rendered, and that provides for any excess proceeds to be paid to a named beneficiary or beneficiaries.

45:7-89. Changes in funding arrangements; written statement required

Where a provider, with the written consent of the purchaser, replaces a funeral trust used to fund a prepaid funeral agreement with a funeral insurance policy or converts an agreement funded by a funeral trust to one which is funded by a funeral insurance policy, the provider shall give to the purchaser a written statement which sets forth the material differences between the original and the new funding arrangements and which discloses the provider's earning of a commission based upon that transaction.

45:7-90. Advertising of rebates and discounts limited; financing through installment contracts or credit life insurance prohibited; waiver prohibited

No person shall:

a. Advertise "discounts," "rebates" or other price reduction incentives:

(1) which are not actual reductions of the retail prices of a provider's current general price list; or

(2) which are based solely on a funeral insurance policy's premium rate tables.

b. In offering to provide preneed funeral arrangements or prepaid funeral agreements, use the word "trust" or "trust funded" in any name, advertisement or solicitation in a misleading manner.

c. Fund or finance preneed funeral arrangements or a prepaid funeral agreement through retail installment contracts or credit life insurance, or in any manner other than a funeral trust or funeral insurance policy.

d. Waive any provision of this act in any agreement in which a person pays money under, or in connection with, a prepaid funeral agreement. Any agreement to waive any portion of this act shall render the agreement voidable by the purchaser.

45:7-91. Prepaid funeral agreements made with recipients of supplemental security income or medicaid not to exceed fair market value; crime of the fourth degree

A person is guilty of a crime of the fourth degree if he knowingly or purposefully solicits or induces any person to make a prepaid funeral agreement, whether funded with a funeral insurance policy or a funeral trust, with the intent to collect or charge more than the fair market value for prepaid funeral goods or services when the purchaser or intended funeral recipient is:

- a. an aged, blind or disabled applicant for, or recipient of, benefits pursuant to the Supplemental Security Income Program under P.L.1973, c. 256 (C. 44:7-85 et seq.) or any Medicaid program under P.L.1968, c. 413 (C. 30:4D-1 et seq.) utilizing the eligibility criteria of the Supplemental Security Income Program in regard to burial spaces and funds set aside for burial expenses; or
- b. an aged, blind or disabled person who reasonably anticipates applying for, or receiving, the benefits specified in subsection a. of this section.

45:7-92. Agreements covered

All prepaid funeral agreements executed on or after the effective date of this 1993 amendatory and supplementary act shall be governed pursuant to the applicable provisions of P.L.1957, c. 182 (C. 2A:102-13 et seq.), P.L.1985, c. 147 (C. 3B:11-16 et al.) and this act.

45:7-93. Sale of interment spaces, related personal property, or personal services by cemetery company not subject to this act

- a. This act applies to the sale of prepaid funeral goods or services and the offering of those goods or services for sale by providers.
- b. This act shall not apply to the sale of interment spaces or related personal property or personal services by a cemetery company as provided for in N.J.S. 8A:1-1 et seq.

45:7-94. Rules and regulations

The State Board of Mortuary Science of New Jersey shall have jurisdiction to enforce the provisions of this act. The board is authorized to adopt such rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), as may be necessary to effectuate the purposes of this act.

New Jersey Statutes Annotated
Title 45, Chapter 1.
Uniform Enforcement Act

45:1-1. Persons entitled to practice, etc. under former laws unaffected
Any person now entitled to practice any profession or to engage in any occupation, governed or regulated by the provisions of this title by virtue of any prior law, shall continue to be entitled to practice or engage in the same, notwithstanding the enactment of this title, and the validity of any license or other authorization to practice any such profession or to engage in any such occupation, heretofore issued to any person under any prior law, or of any proceeding pending to obtain such a license or authorization shall not be affected by the enactment of this title but all such persons shall in all other respects be subject to the provisions of this title.

45:1-2. Repealed by L.1971, c.60, § 5, eff. March 25, 1971

45:1-2.1. Professional boards and commissions;
application of act

The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the New Jersey Real Estate Commission, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, and the State Board of Public Movers and Warehousemen.¹

¹ Abolition of State Board of Public Movers and Warehousemen and transfer of functions, powers and duties to the Division of Consumer Affairs. See Reorganization Plan No. 008-1998, set out under § 45:14D-4.

45:1-2.2. Appointment of members by governor; public members; member from department in executive branch; quorum; vote necessary for action

- a. All members of the several professional boards and commissions shall be appointed by the Governor in the manner prescribed by law; except in appointing members other than those appointed pursuant to subsection b. or subsection c., the Governor shall give due consideration to, but shall not be bound by, recommendations submitted by the appropriate professional organizations of this State.

- b. In addition to the membership otherwise prescribed by law, the Governor shall appoint in the same manner as presently prescribed by law for the appointment of members, two additional members to represent the interests of the public, to be known as public members, to each of the following boards and commissions: The New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the New Jersey Real Estate Commission, the State Board of Shorthand Reporting, the State Board of Social Work Examiners, and the State Board of Veterinary Medical Examiners, and one additional public member to each of the following boards: the Board of Examiners of Electrical Contractors, the State Board of Marriage and Family Therapy Examiners, the State Board of Examiners of Master Plumbers, and the State Real Estate Appraiser Board. Each public member shall be appointed for the term prescribed for the other members of the board or commission and until the appointment of his successor. Vacancies shall be filled for the unexpired term only. The Governor may remove any such public member after hearing, for misconduct, incompetency, neglect of duty or for any other sufficient cause

No public member appointed pursuant to this section shall have any association or relationship with the profession or a member thereof regulated by the board of which he is a member, where such association or relationship would prevent such public member from representing the interest of the public. Such a relationship includes a relationship with members of one's immediate family; and such association includes membership in the profession regulated by the board. To receive services rendered in a customary client relationship will not preclude a prospective public member from appointment. This paragraph shall not apply to individuals who are public members of boards on the effective date of this act.

It shall be the responsibility of the Attorney General to insure that no person with the aforementioned association or relationship or any other questionable or potential conflict of interest shall be appointed to serve as a public member of any board regulated by this section.

Where a board is required to examine the academic and professional credentials of an applicant for licensure or to test such applicant orally, no public member appointed pursuant to this section shall participate in such examination process; provided, however, that public members shall be given notice of and may be present at all such examination processes and deliberations concerning the results thereof, and, provided further, that public members may participate in the development and establishment of the procedures and criteria for such examination

processes..

The Governor shall designate a department in the Executive Branch of the State Government which is closely related to the profession or occupation regulated by each of the boards or commissions designated in section 1 of P.L.1971, c.60 (C. 45:1-2.1) and shall appoint the head of such department, or the holder of a designated office or position in such department, to serve without compensation at the pleasure of the Governor as a member of such board or commission.

- c. A majority of the voting members of such boards or commissions shall constitute a quorum thereof and no action of any such board or commission shall be taken except upon the affirmative vote of a majority of the members of the entire board or commission.

45:1-2.3. Qualifications; rights and dutiesSuch additional members:

- a. Need not meet the educational and professional requirements for membership on such boards or commissions as provided in the several statutes establishing such boards and commissions; and
- b. Shall be voting members subject to the same rights, obligations and duties as other members of their respective boards or commissions.

45:1-2.4. Effect of act on term of member in office

Nothing in this act shall affect the right of a board or commission member in office on the effective date of this act to continue to serve for the term for which he was appointed.

45:1-2.5. Compensation and reimbursement of expenses of members; executive secretaries; compensation and terms of employment; offices and meeting places

With respect to the boards or commissions designated in section 1 of P.L.1971, c.60 (C.45:1-2.1), except as otherwise provided in subsection d. of this section, and notwithstanding the provisions of any other law:

- a. The officers and members shall be compensated on a per diem basis in the amount of \$25.00 or an amount to be determined by the Attorney General, with the approval of the State Treasurer, but not to exceed \$100.00 per diem or \$2,500.00 annually, and shall be reimbursed for actual expenses reasonably incurred in the performance of their official duties. Such moneys shall be paid according to rules and regulations promulgated by the Attorney General.
- b. The executive secretary shall receive such salary as shall be determined by the appointing authority within the limits of available appropriations and shall serve at its pleasure. Any such executive secretary who holds a certificate, license or registration issued by the board or commission by which he is employed shall not during such employment be permitted to engage in any profession or occupation regulated by the board or commission.
- c. The head of the department to which such board or commission is assigned shall maintain within any public building, whether owned or leased by the State, suitable quarters for the board's or commission's office and meeting

place, provided that no such office or meeting place shall be within premises owned or occupied by an officer or member of such board or commission.

d. The compensation schedule for members of boards and commissions provided in subsection a. of this section shall not apply to the members of the New Jersey Real Estate Commission, who shall be compensated pursuant to R.S.45:15-6 or to members of the State Board of Medical Examiners who shall receive compensation of \$150 per diem.

45:1-2.6. Inapplicability of act to rights under civil service or any pension law or retirement system

Nothing in this act shall deprive any person of any tenure rights or of any right or protection provided him by Title 11 of the Revised Statutes, Civil Service,¹ or any pension law or retirement system.

¹Now title 11A.

45:1-3. Expenses of boards paid from income; surplus paid to state treasurer; accounts

Each member of the boards mentioned in section 45:1-2¹ of this title shall be entitled to his actual traveling and other expenses incurred in the performance of his duties, which sum shall be paid from the license fees and other sources of income of such boards. Such boards shall also be entitled to expend from their income such sums as shall be necessary to defray all proper expenses incurred by them in the performance of their duties, including the compensation of any of their officers or agents whom they are authorized to compensate. Such boards, if authorized to collect an annual registration or license fee from persons licensed by them, may retain in their treasuries the fees so collected and use the same for the purpose of defraying the expenses of securing evidence against and prosecuting persons violating the provisions of the laws with the enforcement of which they are charged, or, in case the revenue of the boards from other sources shall be insufficient to pay the salary of their secretaries and their other expenses, such fees may be expended for such purposes. Such boards shall be entitled to retain, in addition to the above, at least one hundred dollars in their treasuries for the purpose of preparing and holding their examinations. On or before October thirty-first in each year such boards shall pay to the state treasurer all moneys remaining in their treasuries, except as above stated, which sum, when so paid, shall form a part of the state fund. Such boards shall keep accurate accounts of their receipts and expenditures, which accounts shall be subject to audit by the state comptroller.

¹Repealed; see, now, §§ 45:1-2.1, 45:1-2.2.

45:1-3.1. Application of act

The provisions of this act shall apply to the following boards and commissions: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State

Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, the Radiologic Technology Board of Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, and the State Board of Social Work Examiners.

45:1-3.2. Charges for examinations, licensures and other services; establishment or change by rule; standards

Notwithstanding the provisions of Title 45 of the Revised Statutes or any other law to the contrary, any board or commission named in section 1 of this supplementary act ¹ may by rule establish, prescribe or change the charges for examinations, licensures and other services it performs, which rule shall first be approved by the head of the department to which such board or commission is assigned and shall be adopted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-1). Any board's or commission's charges established, prescribed or changed pursuant to this section shall be established, prescribed or changed to such extent as shall be necessary to defray all proper expenses incurred by the board or commission in the performance of its duties but such charges shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

¹Section 45:1-3.1.

45:1-3.3. Administrative fees charged by boards; modification

The Director of the Division of Consumer Affairs may by rule establish, prescribe, or modify administrative fees charged by boards in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). For purposes of this section, "administrative fees" are charges assessed to licensees, registrants or holders of certificates, as the case may be, for board functions that are not unique to a particular board but are uniform throughout all boards. Administrative fees include, but are not limited to, fees for a duplicate or replacement license, certification or registration, late renewal fee, license reinstatement fee, and the fee for processing change of address.

45:1-4. Salary of secretary

The secretary of each of the boards mentioned in section 45:1-2¹ of this title, whether or not a member thereof, shall be entitled to receive such reasonable salary or compensation for his services as secretary as shall be fixed by such boards, which shall be paid by the boards from their receipts, unless an appropriation is made for the expenses of such boards, in which case the same shall be paid from such appropriation.

¹Repealed. See, now, §§ 45:1-2.1, 45:1-2.2.

45:1-5,

45:1-6. Repealed by L.1979, c.432, § 4, eff. Feb. 14, 1980

45:1-7. Professional or occupational licenses or certificates of registration; duration; expiration; exceptions; fees

Notwithstanding any of the provisions of Title 45 of the Revised Statutes or of any other law to the contrary, all professional or occupational licenses or certificates of registration, except such licenses or certificates issued to real estate brokers or salesmen pursuant to chapter 15 of Title 45, which prior to the effective date of this act were issued for periods not exceeding one year and were annually renewable, shall, on and after the effective date of this act, be issued for periods of two years and be biennially renewable, except that licenses and business permits issued to electrical contractors pursuant to chapter 5A of Title 45 shall be issued for periods of three years and be triennially renewable; provided, however, the boards or commissions in charge of the issuance or renewal of such licenses or certificates may, in order to stagger the expiration dates thereof, provide that those first issued or renewed after the effective date of this act, shall expire and become void on a date fixed by the respective boards or commissions, not sooner than six months nor later than 29 months, after the date of issue.

The fees for the respective licenses and certificates of registration issued pursuant to this act for periods of less or greater than one year shall be in amounts proportionately less or greater than the fees established by law.

45:1-7.1. Application to holders of professional or occupational licenses

a. Notwithstanding any other act or regulation to the contrary, the provisions of this section and sections 6 and 7 of P.L.1999, c.403 (C.45:1-7.2 et al.) shall apply to every holder of a professional or occupational license or certificate of registration or certification issued or renewed by a board specified in section 2 of P.L. 1978, c. 73 (C.45:1-15), who seeks renewal of that license or certificate.

b. Every holder of a professional or occupational license or certificate of registration or certification, issued or renewed by a board specified in section 2 of P.L.1978, c.73 (C.45:1-15), who seeks renewal shall submit a renewal application and pay a renewal fee prior to the date of expiration of the license or certificate of registration or certification. If the holder does not renew the license or certificate prior to its expiration date, the holder may renew it within 30 days of its expiration date by submitting a renewal application and paying a renewal fee and a late fee. Any professional or occupational license or certificate of registration or certification not renewed within 30 days of its expiration date shall be suspended without a hearing.

c. Any individual who continues to practice with an expired license or certificate of registration or certification after 30 days following its expiration date shall be deemed to be engaged in unlicensed practice of the regulated profession or occupation, even if no notice of suspension has been provided to the individual.

d. A professional or occupational license or certificate of registration or certification suspended pursuant to this section may be reinstated within five years following its date of expiration upon submission of a renewal application

and payment of an additional reinstatement fee. An applicant seeking reinstatement of a license or certificate suspended pursuant to this section more than five years past its expiration date shall successfully complete the examination required for initial licensure, registration or certification and submit a renewal application and payment of an additional reinstatement fee.

e. A board specified in section 2 of P.L. 1978, c.73 (C. 45:1-15) shall send a notice of renewal to each of its holders of a professional or occupational license or certificate of registration or certification, as applicable, at least 60 days prior to the expiration of the license or certificate. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for failure to renew.

45:1-7.2. Reinstatement

A board may reinstate the professional or occupational license or certificate of registration or certification of an applicant whose license or certificate has been suspended pursuant to section 5 of P.L.1999, c.403 (C.45:1-7.1), provided that the applicant otherwise qualifies for licensure, registration or certification and submits the following upon application for reinstatement:

- a. Payment of all past delinquent renewal fees;
- b. Payment of a reinstatement fee;
- c. An affidavit of employment listing each job held during the period of suspended license, registration or certification which includes the names, addresses, and telephone numbers of each employer; and
- d. If applicable, satisfactory proof that the applicant has maintained proficiency by completing the continuing education hours or credits required for the renewal of an active license or certificate of registration or certification.

45:1-7.3. Renewal applications

- a. Renewal applications for all professional or occupational licenses or certificates of registration or certification shall provide the applicant with the option of either active or inactive renewal. A renewal applicant electing to renew as inactive shall not engage in professional or occupational practice within the State.
- b. An applicant who selects the inactive renewal option shall remain on inactive status for the entire renewal period unless, upon application to the board, the board permits the inactive applicant to return to active status provided such applicant presents satisfactory proof that he has maintained proficiency by completing the continuing education hours or credits required for the renewal of an active license, registration or certification, if applicable.

45:1-8. Contractors; application of § 45:1-9

The provisions of this act apply to the following classes of contractors:

- a. Tree experts, certified pursuant to P.L.1940, c.100 (C. 13:1-28 et seq.¹);
- b. Home repair contractors, licensed pursuant to P.L.1960, c.41 (C. 17:16C-62 et seq.);
- c. Electrical contractors, licensed pursuant to P.L.1962, c.162 (C. 45:5A-1 et seq.);
- d. Master plumbers, licensed pursuant to P.L.1968, c. 362 (C. 45:14C-1 et seq.);
- e. Well drillers, licensed pursuant to P.L.1947, c.377 (C. 58:4A-5 et seq.); and
- f. Any class of contractors who hereafter are licensed by the State.

¹Renumbered C. 45:15C-1 to 45:15C-10.

45:1-9. Indication of license or certificate number on contracts, bids and advertisements

Any contractor licensed by the State shall indicate his license or certificate number on all contracts, subcontracts, bids and all forms of advertising as a contractor.

45:1-10. Disclosure of laboratory payments on bills to patients and third party payors

It shall be unlawful for any person licensed in the State of New Jersey to practice medicine or surgery, dentistry, osteopathy, podiatry or chiropractic to agree with any clinical, bio-analytical or hospital laboratory, wheresoever located, to make payments to such laboratory for individual tests, combination of tests, or test series for patients unless such person discloses on the bills to patients and third party payors the name and address of such laboratory and the net amount or amounts paid or to be paid to such laboratory for individual tests, combination of tests or test series.

45:1-10.1. Claims for third party payment; licensed health care professional; responsibility for filing

Effective 12 months after the adoption of regulations establishing standard health care enrollment and claim forms by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23), a health care professional licensed pursuant to Title 45 of the Revised Statutes is responsible for filing all claims for third party payment, including claims filed on behalf of the licensed professional's patient for any health care service provided by the licensed professional that is eligible for third party payment, except that at the patient's option, the patient may file the claim for third party payment.

a. In the case of a claim filed on behalf of the professional's patient, the professional shall file the claim within 60 days of the last date of service for a course of treatment, on the standard claim form adopted by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23).

b. In the case of a claim in which the patient has assigned his benefits to the professional, the professional shall file the claim within 180 days of the last date of service for a course of treatment, on the standard claim form adopted by the Commissioner of Banking and Insurance pursuant to section 1 of P.L.1999, c.154 (C.17B:30-23). If the professional does not file the claim within 180 days of the last date of service for a course of treatment, the third party payer shall reserve the right to deny payment of the claim, in accordance with regulations established by the Commissioner of Banking and Insurance, and the professional shall be prohibited from seeking any payment directly from the patient.

(1) In establishing the standards for denial of payment, the Commissioner of Banking and Insurance shall consider the good faith use of information provided by the patient to the professional with respect to the identity of the patient's third party payer, delays in filing a claim related to coordination of benefits between third party payers and any other factors the commissioner deems appropriate, and, accordingly, shall define specific instances where the sanctions permitted pursuant to this subsection shall not apply.

(2) A professional who fails to file a claim within 180 days and whose claim for payment has been denied by the third party payer in accordance with this subsection may, in the discretion of a judge of the Superior Court, be permitted to refile the claim if the third party payer has not been substantially prejudiced thereby. Application to the court for permission to refile a claim shall be made within 14 days of notification of denial of payment and shall be made upon

motion based upon affidavits showing sufficient reasons for the failure to file the claim with the third party payer within 180 days.

c. The provisions of this section shall not apply to any claims filed pursuant to P.L.1972, c.70 (C.39:6A-1 et seq.).

d. A health care professional who violates the provisions of subsection a. of this section may be subject to a civil penalty of \$250 for each violation plus \$50 for each day after the 60th day that the provider fails to submit a claim. The penalty shall be sued for and collected by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq.

45:1-11. Violations; penalty

Any person violating this act shall be guilty of a misdemeanor.

45:1-12. Podiatrist, optometrist or psychologist or professional service corporation; charge for completion of claim form for health insurance; fine; collection and enforcement

No podiatrist, optometrist or psychologist and no professional service corporation engaging in the practice of podiatry, optometry or psychology in this State shall charge a patient an extra fee for services rendered in completing a medical claim form in connection with a health insurance policy. Any person violating this act shall be subject to a fine of \$100.00 for each offense.

Such penalty shall be collected and enforced by summary proceedings pursuant to the Penalty Enforcement Law (N.J.S. 2A:58-1 et seq.). The Superior Court and municipal court shall have jurisdiction within its territory of such proceedings.

Process shall be either in the nature of a summons or warrant and shall issue in the name of the State, upon the complaint of the State Board of Medical Examiners with respect to podiatrists, the New Jersey State Board of Optometry for optometrists or the State Board of Psychological Examiners for psychologists.

45:1-13. Repealed by L.1999, c.403, § 12, eff. Jan. 18, 2000

45:1-14. Legislative findings and declarations; liberal construction of act
The Legislature finds and declares that effective implementation of consumer protection laws and the administration of laws pertaining to the professional and occupational boards located within the Division of Consumer Affairs require uniform investigative and enforcement powers and procedures and uniform standards for license revocation, suspension and other disciplinary proceedings by such boards. This act is deemed remedial, and the provisions hereof should be afforded a liberal construction.

45:1-15. Boards and professions or occupations regulated by or through such boards; application of act

The provisions of this act shall apply to the following boards and all professions or occupations regulated by, through or with the advice of those boards: the New Jersey State Board of Accountancy, the New Jersey State Board of Architects, the New Jersey State Board of Cosmetology and Hairstyling, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage and Family Therapy Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical

Examiners, the Acupuncture Examining Board, the State Board of Chiropractic Examiners, the State Board of Respiratory Care, the State Real Estate Appraiser Board, the State Board of Social Work Examiners, the State Board of Physical Therapy, the Professional Counselor Examiners Committee, the New Jersey Cemetery Board, the Orthotics and Prosthetics Board of Examiners, the Occupational Therapy Advisory Council, the Electrologists Advisory Committee, the Alcohol and Drug Counselor Committee, the Fire Alarm, Burglar Alarm, and Locksmith Advisory Committee, the Home Inspection Advisory Committee, the Massage, Bodywork and Somatic Therapy Examining Committee, and the Audiology and Speech-Language Pathology Advisory Committee.

45:1-15.1. Rules and regulations

Consistent with their enabling acts, P.L.1978, c.73 (C.45:1-14 et seq.) and the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the boards and others set forth in section 2 of P.L.1978, c.73 (C.45:1-15) are authorized to adopt rules and regulations to serve the public health, safety and welfare.

45:1-16. Definitions

As used within this act the following words or terms shall have the indicated definition unless the context clearly indicates otherwise.

"Board" means any professional or occupational licensing board designated in section 2 of this act.¹

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Person" means any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestuis que trust thereof.

¹Section 45:1-15.

45:1-17. Powers of Attorney General to implement act and administer law enforcement activities of boards

In implementing the provisions of this act and administering the law enforcement activities of those professional and occupational boards located within the Division of Consumer Affairs, the Attorney General may:

- a. After advice to the board or boards in question of his intent to proceed under this section, and the specific action he intends to take, and the failure of such board or boards to take steps in accordance with the advice of the Attorney General within 30 days of receipt of such advice, promulgate rules and regulations consistent with the provisions of this act and the Administrative Procedure Act, P.L.1968, c.410 (C. 52:14B-1 et seq.) governing the procedure for administrative hearings before all boards within the Division of Consumer Affairs. Such rules and regulations shall govern administrative complaints, answers thereto, issuance of subpoenas, appointment of hearing examiners, adjournments, submission of proposed findings of fact and conclusions of law, the filing of briefs, and such other procedural aspects of administrative hearings before the boards as the Attorney General may deem necessary; provided, however, nothing herein authorized shall be construed to require the Attorney General to promulgate rules regarding prehearing investigative procedures.
- b. After advice to the board or boards in question of his intent to proceed under this section, and the specific action he intends to take, and the failure of such board or boards to take steps in accordance with the advice of the Attorney General within 30 days of receipt of such advice, promulgate substantive rules

and regulations consistent with the provisions of any statute governing the activities of any licensing agency, board or committee located within the Division of Consumer Affairs, which shall be limited to disciplinary matters and arbitrary restrictions on initial licensure. In addition to promulgating such rules and regulations, the Attorney General may direct that any proposed or existing regulation be amended, abandoned or repealed. Prior to the final adoption of any regulation affecting the activities of any professional or occupational licensing agency, board or committee located within the division and prior to the issuance of any directive to amend, abandon or repeal any regulation, the Attorney General or his designee shall first consult with the agency, board or committee whose activities are affected regarding the proposed action.

c. After a full consideration of all relevant facts and the applicable law, may direct the initiation of any appropriate enforcement action by a professional or occupational licensing board or set aside, modify or amend, as may be necessary, any action or decision of a licensing agency, board or committee located within the Division of Consumer Affairs; provided, however, no such action shall be directed by the Attorney General in reviewing the action or decision of an agency, board or committee unless such action or decision is contrary to applicable law.

45:1-18. Investigative powers of boards, director or attorney general
Whenever it shall appear to any board, the director or the Attorney General that a person has engaged in, or is engaging in any act or practice declared unlawful by a statute or regulation administered by such board, or when the board, the director or the Attorney General shall deem it to be in the public interest to inquire whether any such violation may exist, the board or the director through the Attorney General, or the Attorney General acting independently, may exercise any of the following investigative powers:

a. Require any person to file on such form as may be prescribed, a statement or report in writing under oath, or otherwise, as to the facts and circumstances concerning the rendition of any service or conduct of any sale incidental to the discharge of any act or practice subject to an act or regulation administered by the board;

b. Examine under oath any person in connection with any act or practice subject to an act or regulation administered by the board;

c. Inspect any premises from which a licensed profession or occupation is conducted;

d. Examine any goods, ware or item used in the rendition of any professional or occupational service;

e. Examine any record, book, document, account or paper maintained by or for any professional or occupational licensee in the regular course of practicing such profession or engaging in such occupation;

f. For the purpose of preserving evidence of an unlawful act or practice, pursuant to an order of the Superior Court, impound any record, book, document, account, paper, goods, ware, or item used or maintained by or for any board licensee in the regular course of practicing such profession or engaging in such occupation. In such cases as may be necessary, the Superior Court may, on application of the Attorney General, issue an order sealing items or material subject to this subsection.

In order to accomplish the objectives of this act or any act or regulation administered by a board, the Attorney General may hold such investigative hearings as may be necessary and may issue subpoenas to compel the

attendance of any person or the production of books, records or papers at any such hearing or inquiry.

45:1-19. Failure or refusal to file statement or report, refusal of access to premises or failure to obey subpoena; penalty

If any person shall fail or refuse to file any statement or report or refuse access to premises from which a licensed profession or occupation is conducted in any lawfully conducted investigative matter or fail to obey a subpoena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order:

- a. Adjudging such person in contempt of court; or
- b. Granting such other relief as may be required; or
- c. Suspending the license of any such person unless and until compliance with the subpoena or investigative demand is effected.

45:1-20. Compelling testimony or production of book, paper or document; immunity from prosecution

If any person shall refuse to testify or produce any book, paper, or other document in any proceeding under this act for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, convict him of a crime, or subject him to a penalty or forfeiture, and shall, notwithstanding, be directed to testify or to produce such book, paper, or document by the Attorney General, he shall comply with such direction.

A person who is entitled by law to, and does assert such privilege, and who complies with such direction of the Attorney General shall not thereafter be prosecuted or subjected to any penalty or forfeiture in any criminal proceeding which arises out of and relates to the subject matter of the proceeding. No person so testifying shall be exempt from prosecution or punishment for perjury or false swearing committed by him in giving such testimony or from any civil or administrative action arising from such testimony.

45:1-21. Grounds for refusal to admit to examination or denial, suspension or revocation of any certificate, registration or license; definitions

A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license.

- a. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
- b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
- c. Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence;
- e. Has engaged in professional or occupational misconduct as may be determined by the board;
- f. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

- g. Has had his authority to engage in the activity regulated by the board revoked or suspended by any other state, agency or authority for reasons consistent with this section;
- h. Has violated or failed to comply with the provisions of any act or regulation administered by the board;
- i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare;
- j. Has repeatedly failed to submit completed applications, or parts of, or documentation submitted in conjunction with, such applications, required to be filed with the Department of Environmental Protection;
- k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) or any insurance fraud prevention law or act of another jurisdiction or has been adjudicated, in civil or administrative proceedings, of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.) or has been subject to a final order, entered in civil or administrative proceedings, that imposed civil penalties under that act against the applicant or holder;
- l. Is presently engaged in drug or alcohol use that is likely to impair the ability to practice the profession or occupation with reasonable skill and safety. For purposes of this subsection, the term "presently" means at this time or any time within the previous 365 days;
- m. Has prescribed or dispensed controlled dangerous substances indiscriminately or without good cause, or where the applicant or holder knew or should have known that the substances were to be used for unauthorized consumption or distribution;
- n. Has permitted an unlicensed person or entity to perform an act for which a license or certificate of registration or certification is required by the board, or aided and abetted an unlicensed person or entity in performing such an act;
- o. Advertised fraudulently in any manner.

For purposes of this act:

"Completed application" means the submission of all of the information designated on the checklist, adopted pursuant to section 1 of P.L.1991, c. 421 (C.13:1D-101), for the class or category of permit for which application is made. "Permit" has the same meaning as defined in section 1 of P.L.1991, c. 421 (C.13:1D-101).

45:1-21.1. Annual summary of compliance information and attendance at continuing education seminars; costs; information deemed public records

- a. A board obtaining information from the Department of Environmental Protection pursuant to section 1 of P.L.1991, c.418 (C. 13:1D-110) on the compliance of a member of a regulated profession with the requirements for completed applications of the department, shall annually develop a detailed written summary of the information gathered by the department pursuant to P.L.1991, c.418 (C. 13:1D-110) regarding compliance with the department's requirements for completed applications and attendance records for continuing education seminars required to be filed with the department pursuant to section 2 of P.L.1991, c.419 (C. 13:1D-117).
- b. Any reasonable costs incurred in preparation of the report required pursuant to this section may be included in the charges authorized pursuant to P.L.1974, c.46 (C. 45:1-3.2).

c. Information required to be compiled by a board pursuant to this section, shall be deemed to be public records subject to the requirements of P.L.1963, c.73 (C. 47:1A-1 et seq.).

45:1-21.2. Suspension of certain licenses; hearing

The director or a board shall suspend, as appropriate, after a hearing, the license, registration or certification of any person who has been certified by a lender or guarantor and reported to the director or the board, as the case may be, for nonpayment or default of a State or federal direct or guaranteed educational loan. The license, registration or certification shall not be reissued until the person provides the director or board with a written release issued by the lender or guarantor stating that the person has cured the default or is making payments on the loan in accordance with a repayment agreement approved by the lender or guarantor. If the person has continued to meet all other requirements for licensure, registration or certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director or the board may impose.

45:1-22. Additional or alternative penalties to revocation, suspension or refusal to renew; temporary order suspending or limiting license; subpoena
In addition or as an alternative, as the case may be, to revoking, suspending or refusing to renew any license, registration or certificate issued by it, a board may, after affording an opportunity to be heard:

- a. Issue a letter of warning, reprimand, or censure with regard to any act, conduct or practice which in the judgment of the board upon consideration of all relevant facts and circumstances does not warrant the initiation of formal action;
- b. Assess civil penalties in accordance with this act;
- c. Order that any person violating any provision of an act or regulation administered by such board to cease and desist from future violations thereof or to take such affirmative corrective action as may be necessary with regard to any act or practice found unlawful by the board;
- d. Order any person found to have violated any provision of an act or regulation administered by such board to restore to any person aggrieved by an unlawful act or practice, any moneys or property, real or personal, acquired by means of such act or practice; provided, however, no board shall order restoration in a dollar amount greater than those moneys received by a licensee or his agent or any other person violating the act or regulation administered by the board;
- e. Order any person, as a condition for continued, reinstated or renewed licensure, to secure medical or such other professional treatment as may be necessary to properly discharge licensee functions.

A board may, upon a duly verified application of the Attorney General that either provides proof of a conviction of a court of competent jurisdiction for a crime or offense involving moral turpitude or relating adversely to the regulated profession or occupation, or alleges an act or practice violating any provision of an act or regulation administered by such board, enter a temporary order suspending or limiting any license issued by the board pending plenary hearing on an administrative complaint; provided, however, no such temporary order shall be entered unless the application made to the board palpably demonstrates a clear and imminent danger to the public health, safety and welfare and notice of such application is given to the licensee affected by such order.

In any administrative proceeding commenced on a complaint alleging a violation of an act or regulation administered by a board, such board may issue subpoenas

to compel the attendance of witnesses or the production of books, records, or documents at the hearing on the complaint.

45:1-23. Summary proceeding in Superior Court; injunction; orders necessary to prevent unlawful practice or remedy past unlawful activity
Whenever it shall appear to a board, the director or the Attorney General that a violation of any act, including the unlicensed practice of the regulated profession or occupation, or regulation administered by such board has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting such act or practice. In any such proceeding the court may assess a civil penalty in accordance with the provisions of this act, order restoration to any person in interest of any moneys or property, real or personal, acquired by means of an unlawful act or practice and may enter such orders as may be necessary to prevent the performance of an unlawful practice in the future and to fully remedy any past unlawful activity. In any action brought pursuant to this section, the court shall not suspend or revoke any license issued by a board.

45:1-24. Failure to comply with order of board directing payment of penalties or restoration of moneys or property; enforcement
Upon the failure of any person to comply within 10 days after service of any order of a board directing payment of penalties or restoration of moneys or property, the Attorney General or the secretary of such board may issue a certificate to the Clerk of the Superior Court that such person is indebted to the State for the payment of such penalty and the moneys or property ordered restored. A copy of such certificate shall be served upon the person against whom the order was entered. Thereupon the clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted and of the State, a designation of the statute under which the penalty is imposed, the amount of the penalty imposed, and amount of moneys ordered restored, a listing of property ordered restored, and the date of the certification. Such entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court, and the Attorney General shall have all rights and remedies of a judgment creditor in addition to exercising any other available remedies. Such entry, however, shall be without prejudice to the right of appeal to the Appellate Division of the Superior Court from the board's order.

An action to enforce the provisions of any order entered by a board or to collect any penalty levied thereby may be brought in any municipal court or the Superior Court in summary manner pursuant to the Penalty Enforcement Act, (N.J.S. 2A:58-1 et seq.) and the rules of court governing the collection of civil penalties. Process in such action shall be by summons or warrant, and in the event that the defendant fails to answer such action, the court shall issue a warrant for the defendant's arrest for the purpose of bringing such person before the court to satisfy any order entered.

45:1-25. Violations; civil penalty; action to collect or enforce
Any person who engages in any conduct in violation of any provision of an act or regulation administered by a board shall, in addition to any other sanctions provided herein, be liable to a civil penalty of not more than \$10,000 for the first violation and not more than \$20,000 for the second and each subsequent violation. For the purpose of construing this section, each act in violation of any provision of an act or regulation administered by a board shall constitute a

separate violation and shall be deemed a second or subsequent violation under the following circumstances:

- (1) an administrative or court order has been entered in a prior, separate and independent proceeding;
- (2) the person is found within a single proceeding to have committed more than one violation of any provision of an act or regulation administered by a board; or
- (3) the person is found within a single proceeding to have committed separate violations of any provision of more than one act or regulation administered by a board.

b. In lieu of an administrative proceeding or an action in the Superior Court, the Attorney General may bring an action in the name of any board for the collection or enforcement of civil penalties for the violation of any provision of an act or regulation administered by such board. Such action may be brought in summary manner pursuant to "the penalty enforcement law" (N.J.S.A. 2A:58-1 et seq.) and the rules of court governing actions for the collection of civil penalties in the municipal court where the offense occurred. Process in such action may be by summons or warrant and in the event that the defendant in such action fails to answer such action, the court shall, upon finding an unlawful act or practice to have been committed by the defendant, issue a warrant for the defendant's arrest in order to bring such person before the court to satisfy the civil penalties imposed. In any action commenced pursuant to this section, the court may order restored to any person in interest any moneys or property acquired by means of an unlawful act or practice.

c. Any action alleging the unlicensed practice of a profession or occupation shall be brought pursuant to this section or, where injunctive relief is sought, by an action commenced in the Superior Court. In any action brought pursuant to this act, a board or the court may order the payment of costs for the use of the State, including, but not limited to, costs of investigation, expert witness fees and costs, attorney fees and costs, and transcript costs.

45:1-26. Repeal of inconsistent acts and parts of acts

All acts and parts of acts inconsistent with this act are hereby superseded and repealed.

45:1-27. Severability

If any provision of this law or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the law which can be given effect without the invalid provision or application, and to this end the provisions of this law are severable.

**NEW JERSEY ADMINISTRATIVE CODE
TITLE 13. LAW AND PUBLIC SAFETY
CHAPTER 36. STATE BOARD OF MORTUARY SCIENCE**

SUBCHAPTER 1. ADMINISTRATION

13:36-1.1 Seal of the Board

The Seal of the Board shall be the Seal of New Jersey encircled with the words "State Board of Mortuary Science of New Jersey."

13:36-1.2 (Reserved)

13:36-1.3 Board meetings

(a) The Board shall hold an annual meeting in May each year, or at such other time as the President may direct, at which time the President and Secretary of the Board shall be elected for the ensuing year.

(b) Special meetings of the Board may be called by the President upon reasonable notice being given to the members. In the event of unavailability of the President for illness or otherwise, three members of the Board shall have the power to call a special meeting in cases of emergency.

13:36-1.4 Duties of Executive Director

(a) The Executive Director shall be in full charge of office administration. It shall be his or her duty to:

1. Receive complaints and answers;
2. Set and calendar cases for hearings;
3. Issue notices of hearing and statements to respondents;
4. Perform any and all duties which the Board may from time to time impose upon him or her.

13:36-1.5 Inspector's duties

(a) The inspector shall:

1. Inspect mortuaries for cleanliness wherein practitioners of mortuary science are practicing;
 2. Where necessary, view dead human bodies which have been placed in the care of any practitioner of mortuary science;
 3. Inspect the license and registration of practitioners of mortuary science;
 4. Verify employment and check credentials of all interns in training;
 5. Visit any place where the practice of embalming is being conducted or where a funeral is in process of being directed; provided, however, that such visitation shall be made in a respectful and decorous manner, as may be fitting the presence of the dead;
 6. Visit any cemetery, crematory or public mausoleum for the purpose of determining whether dead human bodies entrusted to the care of a practitioner of mortuary science or funeral director are being properly disposed of according to law.
- (b) The inspector shall perform such other duties as may be directed by the Board and shall report to the Board at each regular meeting and at such other times as the Board may direct.

13:36-1.6 Fees and charges

(a) The State Board of Mortuary Science shall charge the following fees:

1. Application fee \$ 50.00
2. Initial license fee:
 - i. During the first year of a biennial renewal period \$250.00
 - ii. During the second year of a biennial renewal period \$125.00
3. Initial certificate of registration for a mortuary:
 - i. During the first year of a biennial renewal period \$500.00
 - ii. During the second year of a biennial renewal period \$250.00
4. Licensure examination fee \$125.00
5. Practical examination fee \$ 75.00
6. Intern registration fee \$ 75.00
7. New installation inspection fee \$150.00
8. Rules and regulations \$ 5.00
9. Biennial license renewal fees:
 - i. Practitioner \$250.00
 - ii. Mortuary certificate of registration \$500.00
 - iii. Late renewal fee (first 30 days) plus license or

- certificate renewal fee \$100.00
- 10. Change of manager registration fee \$ 35.00
- 11. Funeral home name change fee \$ 40.00
- 12. Duplicate license fee \$ 25.00
- 13. Replacement, embossed registration certificate fee \$ 25.00
- 14. Reinstatement fee (after 30 days) plus initial license
fee \$150.00
- 15. Verification of licensure \$ 25.00

13:36-1.7 (Reserved)

13:36-1.8 Record keeping by practitioner of mortuary science

(a) All licensed practitioners of mortuary science shall be required to maintain full, accurate records of all funerals which they conduct or in which they participate in any manner.

(b) Such records are to be kept, electronically or otherwise, on an annualized basis for six years and each funeral will be designated by a number assigned consecutively at the time funeral arrangements are made. The information on such records shall be recorded after the completion of each funeral.

(c) Such records are to include the following:

1. The Statement of Funeral Goods and Services Selected;
2. Cemetery in which burial was made or name of crematorium where appropriate, and the charges made by the cemetery or crematorium;
3. The name and address of any church, synagogue and/or clergy who participated in the funeral service and who received any offering or honorarium, and the amount thereof, if paid by the funeral home;
4. Date of disposition; and
5. The final bill.

13:36-1.9 Statement of Funeral Goods and Services Selected

(a) The practitioner shall compile a "Statement of Funeral Goods and Services Selected" form. The form shall be on a single sheet of paper and shall include at least the following information:

1. The full name of the funeral home, address, telephone number, manager's name and funeral file number;
2. The full name, legal address, and date and place of death of the deceased;

3. The name and address of the person making the funeral arrangements;
4. Estimated charges;
5. All charges relative to the funeral, broken down into at least the five general categories set forth in (d) below, with subtotals and grand totals as indicated;
6. Cash disbursements paid by the family; and
7. The funeral record number as required by N.J.A.C. 13:36-1.8(b).

(b) Promissory notes and other non-related items shall not be included on the form.

(c) A contract may appear at the bottom of the form. If included, it shall be separated from the form by a horizontal line extending across the face of the page, and the heading "Contract" shall appear immediately below the horizontal line.

(d) All charges relative to the funeral shall be categorized as follows:

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.

CATEGORY I--PROFESSIONAL SERVICES

- | | | |
|--|----|----|
| 1. Basic Services of Funeral Director and Staff | \$ | |
| 2. Embalming (including use of preparation room and sanitary care) | | \$ |

If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain below.

- | | |
|-------------------------------------|----|
| 3. Sanitary Care, Without Embalming | \$ |
| 4. Other (Specify) | \$ |
| Category I TOTAL | \$ |

CATEGORY II--OTHER STAFF AND RELATED FACILITIES

- | | | |
|---|----|----|
| 1. Use of Facilities and Staff for Viewing | \$ | |
| 2. Use of Facilities and Staff for Funeral Ceremony | | \$ |
| 3. Use of Facilities and Staff for Memorial Service | | \$ |
| 4. Use of Equipment and Staff for Graveside Service | | \$ |
| 5. Other (Specify) | \$ | |

Category II TOTAL	\$	
CATEGORY III--TRANSPORTATION		
1. Transfer of Remains to Funeral Home		\$
2. Use of Hearse	\$	
3. Use of Limousine(s)	\$	
4. Use of Flower Car(s)	\$	
5. Other (Specify)	\$	
Category III TOTAL	\$	
OPTIONAL PACKAGED SERVICES--Direct		
Cremation, Immediate Burial.		\$
If an optional packaged service is selected, categories I through III are not applicable.		
CATEGORY IV--MERCHANDISE		
1. Casket (Description to include manufacturer, name or model number, type of material and interior material)		\$
2. Vault/Outer Burial Enclosure (Description to include manufacturer, name or model number, and type of material)		\$
3. Clothing	\$	
4. Other (Specify--Items may be packaged for individual items less than \$100.00 each)		\$
Category IV TOTAL	\$	
CATEGORY V--CASH DISBURSEMENTS (Estimated)		
1. Cemetery or Crematory	\$	
2. Clergy (and/or Church)	\$	
3. Pallbearers	\$	
4. Certified Copies of Death Certificate and Permit Fee		\$
5. Newspaper Notices	\$	
6. Other (Specify)	\$	
Category V TOTAL	\$	
GRAND TOTAL	\$	

I have prepared the above Statement of Funeral Goods and Services Selected. I have read and received a copy of the Statement of Funeral Goods and Services Selected.

Signature of Practitioner and License # _____ Signature of Person Making Arrangements _____
and Date _____

For _____ Relationship of Deceased _____
Name of Funeral Home _____
Street Address _____
City, State, Zip Code _____

IF ANY LAW, cemetery or crematory requirements have required the purchase of any of the items listed above, the law or requirement is described below.

☐ Crematory requires container to surround the remains.

☐ Your cemetery requires an outer burial container

☐ Other: _____

REASONS FOR EMBALMING:

☐ Family authorized.

☐ Other: _____

(e) A practitioner who offers the Optional Packaged Services and has that offer accepted by a consumer shall not be required to detail the charges for Categories I through III, which are then not applicable. It shall not be mandatory for practitioners to include the category of "Optional Packaged Services" on the Statement of Funeral Goods and Services Selected form if they do not offer for sale the services of Direct Cremation, Immediate Burial, Forwarding of Remains and/or Receiving of Remains.

(f) Immediately upon completing the "Statement of Funeral Goods and Services Selected" form, the practitioner and the consumer shall sign the form where indicated. The practitioner shall immediately provide a copy to the person for whom the form was prepared.

(g) Any change, addition or deletion authorized by the purchaser after the completion of the form shall be included on the final bill.

13:36-1.10 Limited exemption for anatomical associations of a medical school established and operated by the State of New Jersey for the acceptance and disposition of human remains donated pursuant to the Uniform Anatomical Gift Act

(a) The provisions of this chapter shall apply to the operation, maintenance and use of mortuaries by licensed practitioners of mortuary science for the benefit of anatomical associations of medical schools established and operated by the State of New Jersey, which association is the vehicle for the acceptance and disposition of human remains donated pursuant to the Uniform Anatomical Gift Act, N.J.S.A. 26:6-57 et seq., for the purpose of medical research and education.

(b) Upon the Board's receipt of an application for registration of a mortuary at such an association as described in (a) above, the Board may exempt said association from the following provisions of this chapter:

1. N.J.A.C. 13:36-4.6, Corporation's application for registration of funeral establishment;
2. N.J.A.C. 13:36-4.7, Corporate applicant's charter;
3. N.J.A.C. 13:36-5.1, Display of "Manager" sign;
4. N.J.A.C. 13:36-5.4, Physical structure of mortuary; separation from living quarters;
5. N.J.A.C. 13:36-5.10, Display of establishment sign;
6. N.J.A.C. 13:36-5.19, Public accommodations; and
7. N.J.A.C. 13:36-6.1, Privacy of burial preparation.

(c) Factors the Board shall consider in granting these exemptions include whether the exemptions, if granted, will promote medical research and education and whether the public health, safety and welfare will be safeguarded if the exemptions are granted.

(d) The exemptions, if granted by the Board, shall be specifically identified on the certificate of registration and shall apply only to licensees of the Board of Mortuary Science who are employed by such association as described in (a) above. Unless otherwise provided by the Board, upon expiration of the certificate of registration, any exemptions granted pursuant to this paragraph shall be invalid unless renewed by the Board upon application by said association.

(e) Any association granted such exemptions shall not charge a fee for the operation, maintenance and use of a mortuary pursuant to N.J.S.A. 45:7-61 and this chapter, except for the actual costs of shipping of cremated remains.

SUBCHAPTER 2. INTERNS

13:36-2.1 Qualification for intern registration

(a) The following words and terms, when used in this section, have the following meaning, unless the context clearly indicates otherwise:

1. "Preceptor" means a duly licensed practitioner of mortuary science responsible for the supervision of an intern during the intern's practical training period.
2. "Two years of academic instruction" means the successful completion of 60 degree credits at a community or county college or one-half the credits required to complete a degree at the four-year college or university in which the student is enrolled.

3. "Three years of academic instruction" means the completion of 90 degree credits at a community or county college or four-year college or university or a combination thereof or three-quarters of the credits required to complete a degree at the four-year college or university in which the student is enrolled.

4. "Remedial or basic course" means a non-degree credit course required by a college or university to be completed by a student before being admitted to a specific college level course or degree program course.

(b) An applicant to be registered as an intern shall have satisfactorily completed two or three years of academic instruction in a college or university approved by the Commission on Higher Education or shall be completing the requirement while registered as an intern.

(c) An intern who is registered while concurrently attending college to complete the two-year or three-year academic educational licensure requirement shall:

1. Attend college in the Fall and Spring semester of each year until the requirement is met.

2. Achieve a minimum of eight degree program credits per semester with a minimum cumulative average of 2.0 or its academic equivalent throughout the concurrent registration program. A person who receives less than a 2.0 cumulative average, carries less than the minimum of eight degree program credits at any time during the semester, or who takes more than one remedial or basic course per semester shall have his or her internship terminated unless good cause is established for the continuation of the internship.

3. Have an official transcript of credits forwarded directly to the Board by the institution being attended immediately at the completion of every semester.

4. Notify the Board immediately if the college program is interrupted for any reason.

(d) An out of state resident may be registered as an intern, provided that the applicant is registered with a New Jersey practitioner of mortuary science.

(e) CLEP credits may be included in an academic evaluation by the Commission on Higher Education.

(f) Any credit granted to a student by a college or university for completion of any remedial or basis course shall not be recognized by the Board in any transcript evaluation made by the Commission on Higher Education for an academic qualifying certificate.

13:36-2.2 Request for application

An application for intern registration shall be requested, in writing, by the prospective intern's preceptor. Upon receipt of the request, an application shall

be issued. The application shall be executed by the preceptor and intern and certified in affidavit form, and returned to the Board office immediately. A completed application form shall contain information concerning the prospective intern's educational background, the name and address of the funeral home where the prospective intern will be registered, and the name and license number of the preceptor. A prospective intern shall also submit two passport-size photographs with his or her application for registration.

13:36-2.3 Availability of interns

Registered interns shall be available for funerals, embalmings, removals and other training instruction in accordance with N.J.A.C. 13:36-2.14 and shall assist in the embalmings of at least 75 bodies and the conduct of at least 75 funerals during the practical training period which shall not exceed three years pursuant to N.J.A.C. 13:36-2.12.

13:36-2.4 Intern identification card

During the course of his or her training, every student intern shall at all times carry the intern card issued by the Board.

13:36-2.6 Credit for embalming body

No more than one student intern shall receive credit for the embalming of any one body.

13:36-2.7 Intern qualifications for employment

No licensed practitioner of mortuary science shall engage a student intern unless, prior to such engagement, his or her case volume during the previous calendar year shall meet a minimum requirement of 25 cases which shall not include stillbirths.

13:36-2.8 Absence from training

If for any reason it becomes necessary for an intern to absent himself or herself during his or her internship for a period longer than 30 days, the intern must submit to the Board in letter form the reason for his or her absence and the length of time he or she intends to be away.

13:36-2.9 Termination of training

Upon termination of any internship, the preceptor shall immediately request of the Board a notice of termination form to be completed by him or her and filed with the Board within five days of its receipt.

13:36-2.10 Return of intern identification card

Upon completion or termination of an internship for any reason, the intern shall be charged with the responsibility of returning his or her intern identification card immediately to the Board.

13:36-2.11 Affidavit recommendation form

(a) Upon termination of an internship, an affidavit recommendation form shall be filed with the Board. Any preceptor who refuses to certify any intern for the internship served under his or her supervision shall furnish the Board with a statement under oath setting forth the reasons for such refusal. If not satisfied with such statement, the Board may take such action as it may deem proper.

(b) In the event a preceptor is not available when the affidavit is to be executed, the Board may in its discretion, upon proper proof of satisfactory internship, select someone to sign the affidavit.

13:36-2.12 Extension of internship

No intern shall be permitted to continue his or her period of practical training as a registered intern for more than three years without prior Board approval, which shall only be granted for reasons of hardship, such as illness, disability, active service in the military or other good cause demonstrated by the licensee.

13:36-2.13 (Reserved)

13:36-2.14 Preceptors' responsibility for training

(a) The preceptor shall be charged with the professional responsibility of ensuring interns are thoroughly trained in the theory and practice of mortuary science, and the laws, rules and regulations pertaining thereto, and are proficient in the following areas:

1. Removal of remains, embalming, restorative art, dressing and casketing remains;

2. Making funeral arrangements with families, which includes selling of merchandise, taking statistical information from families, filing death certificates, preparing obituary notices and placing same with newspapers, completing funeral cortege lists, arranging cortege cars in proper order on the day of the funeral, and attending viewings;

3. Ordering and pricing funeral merchandise, including facilitating the arrangement of flowers, arranging for and coordinating a schedule for the clergyman, church, crematory or cemetery, livery, pallbearers, visitation of various organizations, transportation by common carrier, and delivery of outer enclosures to the cemetery; and

4. Performing such other incidental duties related to the practice of mortuary science and the maintenance of the funeral establishment.

SUBCHAPTER 3. EXAMINATIONS

13:36-3.1 Qualifications for licensure

(a) In order to be eligible for licensure, a candidate first shall submit to the Board the following:

1. A completed application form which shall contain the name and address of the applicant and the name and address of the applicant's employer;

2. An official transcript or diploma which shows that before entering a school of mortuary science, the candidate completed a four-year course of study in an approved public or private high school or the equivalent thereof;

3. Evidence that the candidate has completed a minimum of two years of academic instruction in a college or university approved by the Commission on Higher Education and one year of academic instruction in a school of mortuary science approved by the American Board of Funeral Service Education or has completed a minimum of three years of academic instruction in a college or university approved by the Commission on Higher Education and one year of academic instruction in a school of mortuary science approved by the American Board of Funeral Service Education;

4. A certificate from a preceptor in this State which shows that the candidate has served a one-year or two-year period of practical training as a registered intern under the preceptor, pursuant to the provisions of N.J.S.A. 45:7-49(a)(2);

5. Evidence of having achieved a passing score on the National Board Examination;

6. Evidence of having achieved a passing score on the Mortuary Jurisprudence examination administered by the Board pursuant to N.J.A.C. 13:36-3.2;
7. Evidence of having achieved a passing score on the practical examination administered by the Board pursuant to N.J.A.C. 13:36-3.7; and
8. An application fee pursuant to N.J.A.C. 13:36-1.6(a)1.

13:36-3.2 Application for Mortuary Jurisprudence examination

- (a) Upon request, an application for the Mortuary Jurisprudence examination shall be forwarded to the applicant. The form shall be signed by the applicant and certified, unless notified otherwise. All applications shall be filed with the Board on or before the first day of the month in which the examination is to be held.
- (b) The statements contained in the application for the Mortuary Jurisprudence examination must be complete and accurate before the application is processed or accepted by the Board.
- (c) A candidate who fails to appear, without good cause, shall forfeit the Mortuary Jurisprudence examination fee.
- (d) An out of state resident may make application for a written examination administered by the Board, provided the applicant meets all admission requirements.
- (e) The Mortuary Jurisprudence examination may include all State laws and rules relevant to the practice of mortuary science, as well as pertinent Federal laws and regulations, which shall be provided to the candidate by the Board upon application for licensure.

13:36-3.3 (Reserved)

13:36-3.4 (Reserved)

13:36-3.5 Passing grades

(a) To successfully fulfill the examination requirement of N.J.S.A. 45:7- 49, a candidate shall:

1. Achieve a scaled score of not less than 75 on each of the two parts of the National Board Examination and achieve a scaled score of not less than 70 on the Mortuary Jurisprudence examination given by the State Board; or
2. When the Board gives a written examination, including a section on mortuary jurisprudence, the candidate shall achieve a score of not less than 70.

13:36-3.6 Examination review procedure

(a) An unsuccessful candidate may apply to the Board for a review of his or her Mortuary Jurisprudence examination papers. Such application shall be submitted to the Executive Director in writing within 10 calendar days following notification of Mortuary Jurisprudence examination results. The Executive Director shall, upon receipt of the candidate's application within the allotted time, arrange a date for the candidate to compare his or her examination sheet with the key answer sheet to ascertain mechanical grading errors, if any.

(b) Such review will take place in the Board office with an observer. The candidate will receive a copy of his or her answer sheet, a copy of the key answer sheet and one blank paper on which to take notes. These documents cannot be removed from the Board office.

13:36-3.7 Practical examination requirements

(a) No candidate will be given the practical examination until after he or she has successfully completed both the written examinations prescribed under N.J.S.A. 45:7-49 and the prescribed period of internship.

(b) Such practical examination shall be held at a place determined by the Board and the examination shall be conducted by one or more Board members. A candidate who has failed the practical examination must wait three months before being scheduled for re-examination.

13:36-3.8 (Reserved)

SUBCHAPTER 4. LICENSE AND REGISTRATION GENERALLY

13:36-4.1 License renewals; reinstatement of lapsed licenses

(a) All applications for biennial license renewal shall be filed with the Board on or before the last day of February of every odd-numbered year or such other date established for renewal by the Division of Consumer Affairs. If the licensee fails to receive such renewal application on or before 30 days prior to the renewal date, he or she shall notify the Board in writing and request that the Board forward the necessary form.

(b) All applications for biennial establishment registration renewal shall be filed with the Board on or before the last day of December of every odd-numbered year or such other date established for renewal by the Division of Consumer Affairs. If the applicant fails to receive such renewal application on or before 30 days prior to the renewal date, he or she shall notify the Board in writing and request that the Board forward the necessary form.

(c) A licensee who has failed to renew his or her biennial license for two or more biennial license renewal periods may apply to the Board for reinstatement of his or her lapsed license upon submission to the Board of satisfactory proof of the following:

1. Achievement of a scaled score of not less than 70 on the Mortuary Jurisprudence examination administered by the Board within one year of application for reinstatement;

2. Payment of all biennial license renewal fees as provided in N.J.A.C. 13:36-1.6 for each biennial license renewal period in which the licensee has failed to renew his or her biennial license;

3. Payment of a reinstatement fee pursuant to N.J.A.C. 13:36-1.6; and

4. Satisfaction of the continuing professional competency requirements pursuant to N.J.A.C. 13:36-10.11(a).

13:36-4.2 Notice of residence address change; corporate structure

(a) Every licensee shall give notice in writing to the Board of Mortuary Science of any change of his or her residence address within 10 days after such change of address.

(b) When a funeral establishment is operated by a corporation, a limited partnership or a limited liability corporation, the licensee in charge shall notify the Board within 10 days of any change in the information requested pursuant to N.J.A.C. 13:36-4.6(a)2.

13:36-4.3 Legal name change

(a) If a licensee changes his or her name, the change will only be recorded by the Board upon receipt of legal documentation to substantiate the name change.

(b) If it is necessary to issue a duplicate license certificate, the original certificate must be returned for cancellation, if possible.

13:36-4.4 New installations

(a) Except as provided in N.J.A.C. 13:36-4.13, any person desiring to operate, maintain, or use a mortuary shall first apply to the Board and remit payment of the fee provided in N.J.A.C. 13:36-1.6 for a new installation inspection and an application for certificate of registration.

(b) A new installation inspection of the premises shall be made by the inspector before a certificate of registration is granted.

(c) When the new installation inspection is made, temporary approval may be granted to operate until a certificate of registration is issued.

13:36-4.5 Change of ownership

(a) Whenever there are any changes whatsoever in ownership, including a change of stockholders in an existing and continuing corporation, it shall be necessary for the new ownership to notify the Board within five working days after the ownership changes or stock transfer.

(b) Upon request, any new owner shall provide the Board with records of prepaid funeral agreements required to be maintained pursuant to N.J.A.C. 13:36-11.16.

13:36-4.6 Corporation's application for registration of funeral establishment

(a) Applications for registration of a funeral establishment to be operated by a corporation, a limited partnership and/or a limited liability company shall be accompanied by the fee provided in N.J.A.C. 13:36-1.6 and by:

1. A copy of the certificate of incorporation or certificate of agreement of formation certified by the Secretary of State;

2. The name, residence addresses and residence telephone numbers of the following:

- i. The officers of the corporation;

ii. The general partner(s) of a limited partnership (and, if a general partner is a corporation, the officers of the corporation); and/or

iii. The managing or operating members of a limited liability company (and, if a member of a limited liability company is a corporation, the officers of the corporation);

3. A copy of the corporate resolution (certified by the secretary of the corporation and impressed with the corporate seal) or limited partnership or limited liability company statement (certified by the general partner of the limited partnership or the managing or operating member of the limited liability company) designating the licensed practitioner of mortuary science; and

4. A letter forwarded to the Board by the funeral establishment manager indicating that he or she accepts the position.

13:36-4.7 Corporate applicant's charter

(a) All corporate charters are required to contain a provision stating that the practice of mortuary science, funeral directing and embalming shall be performed only by persons duly licensed by the State Board of Mortuary Science to do so.

(b) The following clause is an illustration of what the State Board of Mortuary Science shall accept as compliance with the Section.

To own, maintain, conduct, carry on and operate one or more funeral homes in the State of New Jersey, and for that purpose to hire, employ and engage the services of one or more embalmers and/or funeral directors duly licensed as such by the State of New Jersey, and to employ such other person or persons which the directors shall deem necessary to carry on and conduct such practice.

Subject to the rules and regulations heretofore made or promulgated by the State Board of Mortuary Science, and the said rules and regulations to be hereafter made or promulgated and other applicable laws of the State of New Jersey, to engage in the business and/or profession of mortuary science, embalming and funeral directing.

(c) It is the sense of this Section that a corporate funeral establishment shall at no time be operated by persons other than those duly licensed by the State Board of Mortuary Science.

(d) No corporate applicant will be denied a certificate of registration where the objects of the charter comply substantially with the subsection (c) of this Section, in addition to the other requisites set forth in the rules.

13:36-4.8 Full-time licensed manager

(a) Every establishment operating under corporate, limited partnership or limited liability company ownership, authorized to carry on the practice of mortuary science, shall be under the direct supervision of a full-time licensed manager.

(b) The manager shall be responsible for the direction, management and control of all work emanating from the establishment.

(c) Whenever the manager's services are terminated, the manager and the licensee in charge of the establishment shall notify the Board, in writing, within 30 days of the termination.

(d) Whenever the manager's services are terminated, the manager or licensee in charge shall provide the new manager with the records of prepaid funeral agreements required to be maintained pursuant to N.J.A.C. 13:36-11.16 no later than 10 days prior to such change, or as soon thereafter as mutually agreed upon by the parties. The licensee in charge shall notify the Board of compliance with this subsection at the same time the licensee files the notice of change in manager with the Board.

(e) Except as set forth in (e) below, the licensee in charge of the establishment shall within 30 days of such termination give notice to the Board of the name of the newly designated manager, whether permanent or temporary. Within 30 days of accepting the manager's position, the newly designated manager shall submit to the Board the following:

1. A letter indicating such acceptance;
2. An application to become a manager; and
3. The fee prescribed for the application.

(f) The licensee in charge of the establishment may within 30 days of such termination submit to the Board documented evidence of hardship or extenuating circumstance. The Board, if it deems such evidence acceptable, may grant the establishment an extension of time up to, but not exceeding, six months after the termination of the former manager in which to secure the services of a new manager.

13:36-4.9 Participation of unlicensed persons

(a) No unlicensed person shall actively participate in any capacity in the actual funeral arrangements, preservation or disposal of dead human bodies, except that duly registered interns may participate in such activities pursuant to the provisions of N.J.S.A. 45:7-47.

(b) No unlicensed person shall actively participate in any capacity in the actual preparation of dead human bodies except for the following:

1. Duly registered interns;

2. Persons who perform religious and/or ritual preparations; and
3. Unlicensed persons who perform tasks on behalf of the registered mortuary for which a license is not required.

(c) The use by an unlicensed person of the words "mortician," "funeral director," "undertaker," or any other words or title of the like import or significance, including, but not limited to, "consultant," "counselor" or "provider" in connection with the offering of any funeral services or merchandise, shall constitute unlicensed practice pursuant to N.J.S.A. 45:7- 47.

13:36-4.10 Partnership's application for registration of funeral establishment

(a) A new application for registration of a funeral establishment operated by a new partnership shall be signed by all partners and shall be accompanied by a certified copy of the partnership agreement, the certificate of assumed name, if any, filed in the office of the county clerk and the fee provided in N.J.A.C. 13:36-1.6.

(b) Any limited partnership seeking a certificate of registration shall conform to the requirements of N.J.S.A. 42:3-1 and not N.J.S.A. 42:2-1.

13:36-4.11 Trade names

(a) An application for registration of a funeral establishment operated under a trade name or other assumed name must be accompanied by a certified copy of the trade name certificate as filed in the county clerk's office.

(b) Application for registration of a funeral establishment must be accompanied by an affidavit by the applicant setting forth the true full names, residences and residence telephone numbers of any and all persons having a proprietary or financial interest in the business.

(c) The trade name firm shall forward to the Board the name of the full-time manager in charge. The manager shall also forward to the Board an affidavit stating he or she accepts said position.

(d) Whenever an individual licensed owner conducts an establishment under his or her own surname, then such use of the surname shall not be considered a trade name.

13:36-4.12 Death of licensee or owner

(a) The practice of a mortuary establishment shall cease and the certificate of registration shall become void upon the death of an owner and shall not be renewed unless the executor or administrator of the estate or the deceased owner's heir or heirs informs the Board within 30 days of the death of the owner of their intention to continue the mortuary practice and to apply for a certificate of registration. Such notice must be in writing and conform with the following requirements:

1. It shall state the practice shall be under the direct supervision of a licensed temporary or full-time manager, whichever is applicable, and contain the name of the licensee selected.

2. The firm may operate under the supervision of a temporary manager for a period not longer than 60 days to secure the services of a full-time licensed manager; provided, however, upon making a further request, the Board may grant an extension of time during which the temporary manager may serve.

3. The manager shall simultaneously submit to the Board an affidavit stating his or her willingness to act in such capacity.

4. When the firm is to be operated under an estate, a trade name certificate certified by the county clerk shall be submitted with the notice. This rule shall not apply to corporate firms.

(b) Upon request from the Board, the executor or administrator of the estate shall furnish to the Board a copy of the preneed ledger maintained pursuant to N.J.A.C. 13:36-11.16 within 30 days of the owner's death.

13:36-4.13 Use of a registered mortuary owned by another

(a) A person who owns a New Jersey registered mortuary may use another New Jersey registered mortuary without obtaining a certificate of registration or complying with new funeral home installation requirements up to three times per calendar year. The owner of a New Jersey registered mortuary may permit the owner of another New Jersey registered mortuary to use his or her mortuary up to three times per calendar year. The Board may waive these three times per calendar year limitations upon receipt of an application showing good cause for the waiver.

(b) All parties involved in such a special use agreement shall immediately forward written notice to the Board before each use of the establishment. This notice shall include the following information:

1. Title and address of the firm being used and the name of the manager;

2. The name and address of the firm using the establishment and the name of the licensee in charge;

3. Name of decedent; and

4. The exact date(s) the establishment is to be used.

(c) The name of the establishment using the facility is not to be inserted in obituary and death notices unless the name of the firm registered at that location is also inserted.

13:36-4.14 Active or inactive status; unauthorized practice as professional misconduct

(a) As used in this section, the following terms have the following meanings unless the context indicates otherwise:

1. "Active" means a licensee eligible to engage in the practice of mortuary science as set forth by the Mortuary Science Act, N.J.S.A. 45:7-32 et seq., and pursuant to the rules contained in this chapter.

2. "Board" means the State Board of Mortuary Science of New Jersey.

3. "Inactive" means a person licensed by the Board and in good standing, but who is not eligible to engage in the practice of mortuary science as set forth by the Mortuary Science Act, N.J.S.A. 45:7-32 et seq., and pursuant to the rules contained in this chapter.

4. "Licensee" means any person authorized to engage in the practice of mortuary science as regulated by the Board.

(b) All biennial renewal applications shall provide licensees with the option of either active or inactive license renewal.

1. Licensees may elect to be active or inactive for any biennial period regardless of their status during any prior biennial period.

2. If a licensee elects to return from inactive status to active status, he or she shall provide the Board with proof of compliance with N.J.A.C. 13:36-10.11(b).

3. Board-issued licenses shall conspicuously disclose whether the licensee is active or inactive.

(c) A licensee who elects to be inactive shall remain inactive for the entire biennial period unless, upon application to the Board, the Board elects to return an inactive licensee to active status provided such licensee has demonstrated compliance with N.J.A.C. 13:36-10.11(b).

(d) Any inactive licensee who engages in the practice of mortuary science shall be deemed to be practicing without a license and shall be deemed to have engaged in professional misconduct.

(e) Any licensee or registrant of the Board who permits, solicits, assists, aids, abets, or knowingly acquiesces in the unauthorized practice of mortuary science

by an inactive licensee shall be deemed to have engaged in professional misconduct.

SUBCHAPTER 5. MORTUARIES

13:36-5.1 Display of "Manager" sign

(a) Whenever a firm is required to be operated under the supervision, management and control of a licensed manager pursuant to the provisions of N.J.A.C. 13:36-4.8, the name of the manager shall be conspicuously displayed with the title "manager" on a sign at or about the main entrance of the establishment or on the firm sign, provided, however, that at the option of the firm, the term "senior director" or "executive director" may be substituted for "manager." This sign shall contain legible letters that are no less than 1 1/2 inches in height.

(b) The name of the licensee in charge must also appear with the title "manager," "senior director" or "executive director" on all stationery, billheads, advertising, and in all other instances where the firm name is used.

13:36-5.2 Application approved for specific locations; separate facilities construed

(a) An application for registration of a funeral establishment shall be approved for a specified address and location only.

(b) In the event that the applicant maintains a chapel, preparation room or other funeral service facility in a building or portion thereof physically separated from, and located at a location designated by an address differing from the office and/or chapel or other facilities of the applicant, such chapel, preparation room or other funeral facility shall be deemed a separate funeral establishment or funeral establishments, for which a separate application for registration shall be made.

(c) Nothing contained in this Section shall be construed or interpreted to require a separate registration for such a building, if the building or part thereof is joined or connected by any private passage, walk or driveway existing between the registered establishment and such other building.

13:36-5.3 Transferability of registration certificates

A certificate of registration is not transferable. When a business is discontinued at the registered address the certificate shall be immediately returned to the Board office for cancellation.

13:36-5.4 Physical structure of mortuary; separation from living quarters

(a) All mortuaries must have at least one viewing room, equipment, facilities and private lavatories suitable to serve the general public.

(b) The mortuary must be maintained on floor levels which are separate and distinct from living quarters, kitchens or other rooms that are ordinarily a part of the domestic household unit.

(c) In the case of ranch type establishments or other cases in which the architectural structure makes it impossible to have suitable parlors and facilities on a different floor level, the owner must prove to the Board's satisfaction the existence of a proper division between the mortuary section and the living quarters of the building.

13:36-5.5 Preparation room requirements

(a) Every mortuary must contain a preparation room on the premises which is suitably located and private and shall comply with the following requirements:

1. The walls shall extend from floor to ceiling. The ceiling and walls must be covered with tile, finished plaster, composition wall board or other composition material or combination of these materials. With exception of tile, all of these materials must be finished with enamel, varnish or some other smooth-hard waterproof material.

2. Outside ventilation must be provided for by windows, transoms or air conditioning, and every preparation room shall comply in respect to ventilation with State and local laws, ordinances and regulations. It is also to be ventilated so that no deleterious odors shall be permitted to enter into any other part of the premises of the funeral establishment or into any other adjoining premises or property.

3. The floor shall be concrete or tile with glazed surface. Wood flooring may be used provided it is covered with linoleum or other composition material that is impervious to water.

4. All preparation rooms shall contain only equipment necessary for the preparation or care of dead human bodies for disposal or transportation, and shall not have an opening or doorway into a lavatory which is designated to serve the general public.

5. All doors leading from the preparation room or embalming room must have a smooth surface or covered with material impervious to dirt and liquids. All windows and outside doors must be screened.

13:36-5.6 Equipment requirements

(a) Every funeral establishment in the State shall have in its preparation or embalming room and shall be equipped with, at a minimum, the following:

1. Leakproof trash can;
2. Instrument cabinet;
3. Disinfecting agents;
4. Drainage or viscera bucket;
5. Embalming table, porcelain or metal with a drainage opening in the lower end;
6. Hydro-aspirator with approved vacuum breaker or other approved aspirator;
7. Waste sink installed pursuant to the provisions of N.J.A.C. 5:23;
8. Wash basin with hot and cold running potable water;
9. One leakproof container for storing dirty linens;
10. For each licensee and trainee, protection, apparel and/or equipment as required by all applicable standards of the Occupational Safety and Health Administration Agency (OSHA).
11. One container of hardening compound;
12. One set metal or rubber drain tubes (large, medium, small);
13. One set metal injection tubes (large, medium, small);
14. One grooved director equal;
15. One aneurism needle;
16. One large trocar;
17. One small trocar;
18. One scalpel;
19. One pair scissors;
20. At least two hemostats;
21. Two forceps;
22. One hypodermic syringe;
23. Hypodermic needles (assorted);

24. Suture needles; and

25. Suture thread.

(b) All instruments and appliances used in embalming shall be thoroughly cleansed and disinfected immediately after the conclusion of each individual case.

13:36-5.7 Potable water supply

(a) All licensed owners and managers of funeral establishments are charged with the responsibility of insuring that the potable water supply is not open to the danger of contamination from any source.

(b) This responsibility may be satisfied by the installation of any approved hydro-aspirator and such other devices as may be necessary to accomplish the purpose of this rule.

(c) Any infraction of this rule shall be reported immediately to the Board.

13:36-5.8 (Reserved)

13:36-5.9 Multiple funeral establishments in same location

(a) Any individual, partnership, corporation or limited liability company that applies to register any additional funeral establishment(s) in a location already registered as a funeral establishment by the State of New Jersey shall comply with N.J.A.C. 13:36-4 and this subchapter.

(b) In the event an establishment has the same or similar ownership of individuals, partnerships, corporations or limited liability companies as the primary funeral establishment, prices quoted and charged to consumers shall be the same for all establishments in that location.

(c) No more than three funeral establishments shall operate in one facility unless, upon application, the Board in its discretion finds that permitting an additional establishment will be in the best interest of consumers.

13:36-5.10 Display of establishment sign

Every funeral home, except a trade service, shall display the firm name as registered in the certificate of registration on a sign located reasonably near the main entrance or clearly visible from the street and the main entrance.

13:36-5.11 Burial preparation performed in separate room

No embalming or other preparation for burial or disposition of a dead human body shall be performed in any funeral establishment except in a room set aside exclusively and approved by the Board for such purpose.

13:36-5.12 Advertising

(a) Definitions: The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

1. "Advertisement" means any attempt, direct or indirect, by publication, dissemination, circulation or broadcast through the public media to induce any person or entity to purchase or enter into an agreement to accept mortuary or funeral services or merchandise.

2. "Public media" means newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, letters, billboards, aerial displays, signs, television, radio, and any other similar item, document, publication or device used to communicate to the general public or to a specific group.

3. "Licensee" means licensed practitioner of mortuary science as defined by N.J.S.A. 45:7-34(g).

4. "Price reduction statement" means a statement, suggestion or implication, direct or indirect, that a service or merchandise is being offered or made available for sale at a price less than the advertiser's routine price. The following words, terms and phrases or their substantial equivalent shall be deemed to indicate a price reduction statement: sale, discount, savings, price cut, bargain, reduced, prices slashed, clearance, regularly, usually, cut rate, originally, formerly, at cost, below cost, wholesale.

5. "Testimonial" means a statement by a person referring to his or her family's personal experience with a mortuary or licensee.

(b) All stationery must indicate the true firm name as registered with the Board of Mortuary Science.

(c) Advertisements shall contain the true firm name, address, and telephone number of the facility as registered with the Board. Advertisements shall also contain the name of the manager or licensee in charge.

(d) An advertisement that makes reference to more than one registered facility shall comply with (c) above regarding one facility provided that only the municipality where the facility is located and the true firm name as it is registered with the Board is disclosed for any additional facilities listed. If an advertisement for any additional facility discloses any further information than the municipality

where the facility is located and the true firm name as it is registered with the Board, the advertisement shall satisfy the requirements of (c) above.

(e) Telephone book listings of two lines or less or small novelty items where the space of advertising is limited shall disclose the municipality where the facility is located and the true firm name as it is registered with the Board.

(f) No licensee or owner of a mortuary shall cause to be published, disseminated, circulated or broadcast any advertisement which is false, fraudulent, deceptive or misleading or which misrepresents, suppresses, conceals, obscures or distorts any material fact.

(g) In addition, it shall be deceptive and misleading for any advertisement to contain the following:

1. The name of a person not licensed by the Board in connection with the name of a mortuary in any manner whatsoever, unless the unlicensed person is clearly and obviously identified in the advertisement as such by the use of the phrase "unlicensed and not qualified to make funeral arrangements, embalm or conduct funerals". The surname of an unlicensed person may appear in the title of a mortuary as registered with the Board.

2. A price reduction statement where the advertisement or current price is in fact no less than the price at which the service or merchandise was offered for sale by the advertiser for a reasonable period of time at least 30 days prior to the advertisement. In the absence of the disclosure of the period during which an advertised price reduction will remain in effect, the period shall be deemed to be 30 days from the date of initial publication.

3. An offer of professional services or merchandise where such services or merchandise are in fact not available from the mortuary or are beyond the ability of the licensee to perform or supply.

4. A license number which has not been issued to the alleged licensee, has lapsed or has been revoked or currently suspended.

5. The name, address and telephone number of a mortuary which does not exist, has not been completely constructed or is not currently open for business.

6. A claim of professional superiority or superior quality of services or merchandise, unless such claim can be substantiated by the licensee upon demand by the Board.

7. Intimidation, undue pressure or undue influence.

(h) An advertisement may contain either a lay or expert testimonial, provided that such testimonial is based upon personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial. A lay person's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to comment upon. An expert testimonial shall be rendered only by an individual possessing

specialized expertise sufficient to allow the rendering of a bona fide statement or opinion. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial, and the failure to do so, if required by the Board, may be deemed occupational misconduct.

1. The name of a person not licensed by the Board when appearing in any testimonial for a mortuary shall be accompanied by the following: "unlicensed and not qualified to make funeral arrangements, embalm or conduct a funeral". The surname of an unlicensed person may appear in the title of a mortuary as registered with the Board.

(i) An advertisement which refers to or sets forth a price shall disclose all services or merchandise which will be provided for that price. The name of the manufacturer and the model number of any casket which will be included for that price also shall be disclosed in the advertisement. Where a price is advertised, no additional charges shall be made for the advertised service or disposition unless the advertisement includes a specific delineation of additional services or merchandise which may be necessary.

(j) The responsibility for the form and content of any advertisement shall be joint and several among all licensees who are principals, partners, or officers of the mortuary identified in the advertisement.

(k) An advertisement may include the name of an inactive licensee as defined in N.J.A.C. 13:36-4.14 provided that the inactive licensee is not held out as the manager or licensee in charge.

(l) A copy of each printed advertisement and a video or audio tape recording of each broadcast advertisement shall be retained by the licensee for a period of three years from the date of initial publication or dissemination. Each such copy or tape shall be made available for review upon request by the Board.

13:36-5.13 Transfer of funeral establishment to new location

Whenever a funeral establishment is to be moved to a new location, it shall be necessary to apply for certificate of registration and to notify the Board, in writing, at least 15 days in advance of the proposed date of opening at the new location in order to allow time for an inspection and registration. A certificate of registration is not transferable.

13:36-5.14 Discontinuation of business or bankruptcy

(a) When a mortuary is permanently closed for business, the manager or licensee in charge shall immediately:

1. Surrender the mortuary's Certificate of Registration to the Board;

2. Remove all signs from the exterior of the closed mortuary;
3. Discontinue the telephone service and all advertising; and
4. Furnish the Board with a copy of the preneed ledger required pursuant to N.J.A.C. 13:36-11.16(a).

(b) When a mortuary files for any form of bankruptcy, the manager or licensee in charge shall, within 10 days of such filing, furnish the Board and the trustee in bankruptcy with a copy of the preneed ledger required pursuant to N.J.A.C. 13:36-11.16(a), and upon request, with all other records required pursuant to N.J.A.C. 13:36-11.16.

13:36-5.15 Unlicensed persons in funeral directing or embalming practice

A licensed practitioner of mortuary science shall not permit any unlicensed person to engage in or take charge of the activities for which a license to engage in the business or practice of funeral directing or embalming is required by the provisions of the Mortuary Science Act.

13:36-5.16 Notice of absence from practice

In cases where a licensed practitioner of mortuary science in charge of an establishment intends to remain away from his or her establishment or practice for a period in excess of 30 days, he or she shall so notify the Board and furnish it with the name of the licensed employee who will remain in charge.

13:36-5.17 Removal of human remains; authorization

No person shall remove human remains from any residence or institution without first securing authorization consenting to the removal from the next of kin or a person legally entitled to grant said authorization.

13:36-5.18 Disposition of human remains

(a) Whenever human remains are entrusted to the care of a licensed practitioner of mortuary science for a disposition, the practitioner shall conform with N.J.A.C. 8:9 and shall not remove any part or dispose of the remains in any manner whatsoever except as permitted by law and as authorized by the person legally entitled to grant said authorization.

(b) Viscera shall be treated with embalming fluid and hardening compound containing formaldehyde preservatives and interred with the remains.

13:36-5.19 Public accommodations

All funeral establishments are places of public accommodation and subject to public accommodation laws including the laws against discrimination.

13:36-5.20 Referral fees

It shall be occupational misconduct for a licensee to pay, offer to pay, or to receive from any person any fee or other form of compensation for the referral of a purchaser of goods and services. The within prohibition shall not prohibit the division of fees among licensees engaged in a bona fide employment, partnership or corporate relationship for the delivery of occupational services.

SUBCHAPTER 6. EMBALMING PROCEDURE

13:36-6.1 Privacy of burial preparation

(a) The preparation for burial or other disposition of all dead human bodies shall be performed in privacy. No one shall be permitted to be present in the embalming, operating or preparation room while a dead human body is being embalmed, washed, or otherwise prepared for burial or other disposition except the following:

1. Licensed practitioners of mortuary science and their employees;
2. Duly authorized instructors of funeral directing schools;
3. Duly registered interns;
4. Public officials or representatives in the discharge of their duties;
5. Duly accredited doctors or nurses;
6. Members of the immediate family of the deceased and their designated representatives; and
7. Persons who perform religious and/or ritual preparations.

13:36-6.2 Dress requirement for embalming

(a) Every person, while engaged in the actual embalming of a dead human body, shall be attired in a clean and sanitary smock or gown, which does not permit blood or other potentially infectious materials to pass through to or reach the employee's work clothes, street clothes, undergarments, skin, eyes, mouth or

other mucous membranes, and shall while so engaged wear protective apparel in compliance with OSHA regulations (see 29 CFR 1910.1030).

(b) The body being embalmed shall at all times be so covered as to insure privacy of the body.

13:36-6.3 Use of poisons

The use of any fluid or compound which contains arsenic, lead, mercury, zinc, silver, antimony or chloral or any poisonous alkaloid in the embalming of a dead human body is prohibited.

13:36-6.4 Disposal of blood and excretion

All blood and excretions of a dead human body shall be disposed of in a sanitary manner. Licensees shall comply with the OSHA regulations (see 29 CFR 1910.1030) in the operation of a licensed funeral establishment and shall use universal precautions according to the Centers for Disease Control recommendations (see Morbidity and Mortality Weekly Reports, including Volume 38, S-6, June 23, 1989, and subsequent volumes available from the Centers for Disease Control, Atlanta, Georgia 30333), incorporated herein by reference. These precautions shall include taking due care to prevent any spread of infection in the handling of a dead human body during transportation, in preparing and during embalming, and after contact with such body, and shall also include the disinfecting of hands and the removal of any soiled clothing.

13:36-6.5 Marking receptacles

(a) All receptacles containing embalming fluid, formaldehyde or any poisonous or dangerous substances shall be plainly marked to indicate the contents thereof in compliance with 29 CFR 1910.1048.

(b) Receptacles containing blood or other potentially infectious materials shall be placed in a container that prevents leakage during collection or storage.

13:36-6.6 Unnatural deaths

No licensed practitioner of mortuary science shall permit the embalming of a dead human body where he or she has information reasonably indicating that death occurred as a result of accidental, homicidal or suicidal means or under suspicious or unnatural circumstances, until the body has been duly released to him or her for embalming or other preparation by the proper authority in accordance with the State Medical Examiners Act (N.J.S.A. 52:17B-87).

13:36-6.7 Interns

An intern may not embalm or perform any part of embalming procedure on a dead body unless such activity is performed under the immediate and direct supervision and control of a licensed practitioner of mortuary science holding a New Jersey license.

13:36-6.8 (Reserved)

SUBCHAPTER 7. SPECIAL RULES OF PRACTICE

13:36-7.1 Handling and embalming bodies dead of an infectious or contagious disease

(a) Except as otherwise provided by law, including, but not limited to, regulation, no person in the conduct of the practice of mortuary science shall:

1. Deny funeral services for any deceased person based upon the cause of death;
2. Place any condition upon the provision of funeral services for any deceased person based upon the cause of death; or
3. Represent that state or local law requires that any condition be placed upon the provision of funeral services for any deceased person based upon the cause of death.

(b) In the preparation for burial or transportation of a dead body, the funeral director, the embalmer and assistants shall use universal precautions according to the Centers for Disease Control recommendations (see Morbidity and Mortality Weekly Reports, including Volume 38, S-6, June 23, 1989, and subsequent volumes available from the Centers for Disease Control, Atlanta, Georgia 30333), incorporated herein by reference, which shall include taking due care to prevent any spread of infection in the handling of such body during transportation, in preparation and during embalming, and after contact with such body, and shall disinfect their hands and remove any soiled clothing. All instruments, gloves, coverings and utensils used in embalming or in handling the body shall be disinfected immediately after being used. All fluids or other matters removed from such body in the process of embalming shall be disposed of in accordance with all applicable State, Federal and local laws and regulations governing medical and infectious waste.

SUBCHAPTER 8. GENERAL RULES OF PRACTICE

13:36-8.1 Carrying license identification card

Every licensed practitioner of mortuary science shall in the conduct of business carry on his or her person the current license identification card.

13:36-8.2 Divulging secrets

A licensed practitioner of mortuary science shall not divulge or permit his or her agents or employees to divulge any privacies, confidences or secrets that may come to his or her attention through the practice of mortuary science. However, this rule shall not be invoked to circumvent the Board's legal powers to carry out its duties and responsibilities under the law, nor the powers of the courts and other public bodies to compel the giving of testimony.

13:36-8.3 Safeguarding public health and decedent's dignity

Every licensed practitioner of mortuary science shall adopt all proper means and methods to safeguard the public health and the dignity of the decedent.

13:36-8.4 Restrictions on employment

A licensed practitioner of mortuary science shall not employ or engage the services of any person other than his or her registered intern or interns or another practitioner in the embalming of cadavers or in the practice of funeral management pursuant to N.J.S.A. 45:7-47.

13:36-8.5 Unauthorized license use

No licensed practitioner of mortuary science shall lend his or her license to any other person, or employ it in such a way as to defeat the purposes of the law; provided, however, this rule shall not prevent the aforesaid licensee from embalming cadavers or supervising funerals and burials on behalf of out-of-State practitioners of mortuary science, funeral directors, or embalmers.

13:36-8.6 (Reserved)

13:36-8.7 Authorized surrender of cadavers

A licensed practitioner of mortuary science shall promptly surrender a cadaver upon proper direction and authorization of the person lawfully entitled to its custody.

13:36-8.8 Authorization to embalm cadaver

No licensed practitioner of mortuary science shall take possession of or embalm a cadaver without first being directed and fully authorized to do by those charged with the duties of interment.

13:36-8.9 Funeral arrangements or quotation of funeral prices

(a) No unlicensed person shall be permitted to make funeral arrangements on behalf of any licensed practitioner of mortuary science, except that duly registered interns may make such arrangements pursuant to N.J.S.A. 45:7-47.

(b) When funeral arrangements are being made, no one but a duly licensed practitioner of mortuary science shall quote prices to a consumer in connection with any funeral services and/or goods. Nothing contained in this section shall preclude quotation of prices when funeral arrangements are not being made.

13:36-8.10 Presence of licensee for disposition of dead human body

Pursuant to N.J.A.C. 3:41-7.4, no interment, cremation or other disposition of a dead human body, or any disinterment thereof, shall be made in the State of New Jersey unless a New Jersey licensed practitioner of mortuary science is present at the time of disposition, provided, however, that this rule shall not apply to a disinterment resulting from a court order in connection with a criminal investigation.

13:36-8.11 Multiple burials

(a) No licensed practitioner of mortuary science shall place the remains, or any part of the remains, of more than one deceased person, stillborn infant, or fetus in a coffin, casket, or other container for the purpose of interment or cremation, or cause the remains, or any part of the remains, of more than one deceased person, stillborn infant, or fetus, to be interred or cremated together unless specific, written authorization to do so has been signed by a person charged with the duties of interment, or by a court of competent jurisdiction.

(b) For the purposes of this section, the only persons who may authorize a licensee to perform a multiple burial are limited to the following:

1. The decedent;
2. A relative or relatives in the order of:
 - i. Surviving spouse;
 - ii. A majority of surviving children of the decedent or the surviving child if one;
 - iii. The surviving parent or parents of the decedent;
 - iv. A majority of the brothers and sisters of the decedent if no child or parent is living; or
 - v. Other next of kin according to the degree of consanguinity.
3. City or county welfare director in cases involving the indigent.
4. Chief medical examiner in cases involving unidentified or unclaimed bodies.
5. A court of competent jurisdiction.

(c) The written authorization to be obtained by the funeral director shall include the name and address, and signature of the person authorizing the multiple burial, the names, ages, and addresses of the deceased, the dates, places and times of their death, the names and addresses of the hospitals or institutions from which the bodies were obtained, the name and address of the cemetery or crematory where the remains are to be interred, or cremated, and the location of the grave in which any interment is to be made.

(d) Each written authorization shall bear a number corresponding to the funeral record number required by the funeral record keeping rule of this chapter, and a signed copy shall be retained by the funeral director making such arrangements for at least seven years thereafter.

SUBCHAPTER 9. PREVENTION OF UNFAIR OR DECEPTIVE ACTS AND PRACTICES

13:36-9.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Accounting year" refers to the particular calendar year or other one year period used by a funeral provider in keeping financial records for tax or accounting purposes.

"Alternative container" means a non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of

human remains and which is made of cardboard, pressed-wood, composition materials (with or without an outside covering) or pouches of canvas or other materials.

"Board" refers to the New Jersey State Board of Mortuary Science.

"Cash advance item" means any item of service or merchandise described to a purchaser as a "cash advance", "accommodation", "cash disbursement", or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to, the following items: Cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

"Casket" means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material, and ornamented and lined with fabric.

"Cremation" means a heating process which incinerates human remains.

"Crematory" means any person, partnership or corporation that performs cremation.

"Direct cremation" means a disposition of human remains by cremation, with or without embalming, without formal viewing, visitation, or ceremony with the body present.

"Funeral goods" means goods which are sold or offered for sale directly to the public for use in connection with funeral services including, but not limited to, merchandise such as casket, vault or other enclosure, clothing, prayer cards, register book, religious artifacts and any other items purchased by the licensed practitioner of mortuary science for resale without substantial alteration.

"Funeral provider" means any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public and is a licensed practitioner of mortuary science or the holder of a certificate of registration to operate a mortuary in the State of New Jersey.

"Funeral services" means any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

"Immediate burial" means a disposition of human remains by burial, with or without embalming, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

"Outer burial container" means any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

"Person" means any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

"Services of funeral director and staff" means the services, not included in prices of other categories in N.J.A.C. 13:36-9.7 which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices.

"Unfinished wood box" means an unornamented casket made of wood which does not have a fixed interior lining.

13:36-9.2 Violations

It shall be a violation of the rules of this subchapter to engage in unfair or deceptive acts or practices as defined herein or to fail to comply with the preventive requirements specified herein; any such action may be deemed to be professional misconduct.

13:36-9.3 Failure to disclose required price information: An unfair or deceptive practice

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in (b) below is not engaged in the unfair or deceptive acts or practices defined here.

(b) To prevent the unfair or deceptive acts and practices mentioned in (a) above as well as those defined in N.J.A.C. 13:36-9.15(a), funeral providers must comply with the provisions of N.J.A.C. 13:36-9.4, 9.5, 9.6, 9.7 and 9.8.

13:36-9.4 Telephone price disclosures

(a) Funeral providers shall tell persons who call the funeral provider's place of business and ask about the terms, conditions, or prices at which funeral goods or funeral services are offered, that price information is available over the telephone.

(b) Funeral providers shall tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in N.J.A.C. 13:36-9.5, 9.6 and 9.7 which reasonably answers the

question and any other information which reasonably answers the question and which is readily available.

13:36-9.5 Casket price list

(a) Funeral providers shall give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider shall offer the list upon beginning discussion of, but in any event before showing caskets. The list shall contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list.

1. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, displayed in a clear and conspicuous manner. Provided however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in N.J.A.C. 13:36-9.7, the information which is required by this section.

(b) Funeral providers shall place on the list, regardless of whether it is printed or typewritten, or in any other format, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

13:36-9.6 Outer burial container price list

(a) Funeral providers shall give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider shall offer the list upon beginning discussion of, but in any event before showing the containers. The list shall contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the price listed.

1. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, displayed in a clear and conspicuous manner. Provided however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in N.J.A.C. 13:36-9.7, the information which is required by this section.

(b) Funeral providers shall place on the list, regardless of whether it is printed or typewritten list or in any other format, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

13:36-9.7 General price list

(a) Funeral providers shall give a printed or typewritten price list for retention to persons who inquire in person about funeral arrangements or the prices of funeral goods or funeral services. When people inquire in person about funeral arrangements or the prices of funeral goods or funeral services, the funeral provider shall offer them the list upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services. This list shall contain at least the following information:

1. The name, address, and telephone number of the funeral provider's place of business;

2. A caption describing the list as a "general price list";

3. The effective date for the price list; and

4. In immediate conjunction with the price disclosures required by (b) below, the statement: "This list does not include prices for certain items that you may ask us to buy for you, such as cemetery or crematory services, flowers, and newspaper notices. The prices for those items will be shown on your bill or the statement describing the funeral goods and services you selected."

(b) Funeral providers shall include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

1. Forwarding the remains to another funeral home, together with a list of the services provided for any quoted price;

2. Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

3. The price range for the direct cremations offered by the funeral provider, together with a separate price for a direct cremation where the purchaser provides the container; separate prices for each direct cremation offered including an unfinished wood box or alternative container; and a description of the services and container (where applicable), included in each price;

4. The price range for the immediate burials offered by the funeral provider, together with a separate price for an immediate burial where the purchaser provides the casket; separate prices for each immediate burial offered including a casket or alternative container; and a description of the services and container (where applicable) included in that price;

5. Transfer of remains to funeral home;

6. Embalming;

7. Other preparation of the body;

8. Use of facilities for viewing;
9. Use of facilities for funeral ceremony;
10. Other use of facilities, together with a list of facilities provided by any quoted price;
11. Hearse;
12. Limousine;
13. Other automotive equipment, together with a description of the automotive equipment provided for any quoted price; and
14. Acknowledgement cards.

(c) Funeral providers shall include on the pricelist in any order, the following information:

1. Either of the following:
 - i. The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
 - ii. The prices of individual caskets disclosed in the manner specified by N.J.A.C. 13:36-9.5; and
2. Either of the following:
 - i. The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
 - ii. The prices of individual outer burial containers, disclosed in the manner specified by N.J.A.C. 13:36-9.6; and
3. The price for the services of funeral director and staff, together with a list of the principal services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)"

13:36-9.8 Statement of funeral goods and services selected

(a) Funeral providers shall give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. This statement shall conform to the requirements of N.J.A.C. 13:36-1.9.

(b) The itemized cash advance prices shall be given to the extent known or reasonably ascertainable. If the cash advance prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.

(c) Funeral providers may give persons any other price information in any other format, in addition to that required by N.J.A.C. 13:36-9.5, 9.6 and 9.7 so long as the statement required by this section is given when required.

13:36-9.9 Embalming provisions

(a) In seeking or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

1. Represent that State or local law requires that a deceased person be embalmed when such is not the case;
2. Fail to disclose that embalming is not required by law except in certain special cases.

(b) To prevent deceptive acts or practices mentioned in (a) above, as well as the unfair or deceptive acts or practices defined in N.J.A.C. 13:36-9.16 and 9.17(a), funeral providers shall:

1. Not represent that a deceased person is required to be embalmed for direct cremation, immediate burial, a funeral using a sealed casket, or if refrigeration is available and the funeral is without viewing or visitation and with a closed casket when State or local law does not require embalming; and
2. Place the following disclosure on the general price list, required by N.J.A.C. 13:36-9.7, in immediate conjunction with the price shown for embalming; "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement which does not require you to pay for it, such as direct cremation or immediate burial."

13:36-9.10 Casket for cremation provisions

(a) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

1. Represent that State or local law requires a casket for direct cremations;
2. Represent that a casket (other than an unfinished wood box) is required for direct cremations.

(b) To prevent the deceptive acts or practices mentioned in (a) above, as well as the unfair or deceptive acts or practices defined in N.J.A.C. 13:36- 9.15(a), funeral providers shall place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an unfinished wood box or an alternative container. Alternative containers can be made of materials like heavy cardboard or composition materials (with or without an outside covering), or pouches of canvas." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

13:36-9.11 Outer burial container provisions

(a) In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

1. Represent that State or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;
2. Fail to disclose to persons arranging funerals that State law does not require the purchase of an outer burial container.

(b) To prevent the deceptive acts or practices mentioned in (a) above, funeral providers must place the following disclosure on the outer burial container price list, required by N.J.A.C. 13:36-9.7, in immediate conjunction with those prices: "In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries ask that you have such a container so that the grave will not sink in. Either a burial vault or a grave liner will satisfy these requirements."

13:36-9.12 General provisions on legal and cemetery requirements

(a) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that Federal, State or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(b) To prevent the deceptive acts or practices mentioned in (a) above, as well as the deceptive acts or practices identified in N.J.A.C. 13:36-9.9, 9.10 and 9.11, funeral providers shall identify and briefly describe in writing on the statement of funeral goods and services selected (required by N.J.A.C. 13:36-9.8) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

13:36-9.13 Provisions on preservative and protective value claims

In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to represent that funeral goods have protective features or will protect the body from gravesite substances when such is not the case.

13:36-9.14 Cash advance provisions

In selling or offering to sell funeral goods and funeral services to the public any cash advance items shall reflect the actual cost to the funeral provider.

13:36-9.15 Required purchase of caskets for direct cremations

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to require that a casket other than an unfinished wood box be purchased for direct cremation.

(b) To prevent the unfair or deceptive act or practice mentioned in (a) above, funeral providers must make an unfinished wood box or alternative container available for direct cremations, if they arrange direct cremations.

13:36-9.16 Other required purchases

(a) In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this section.

(b) To prevent the unfair or deceptive act or practice mentioned in (a) above, funeral providers shall:

1. Place the following disclosure in the general price list, immediately above the price required by N.J.A.C. 13:36-9.7(b) and (c): "the goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our services" between the second and third sentences of the statement specified above herein; and

2. Place the following disclosure on the statement of funeral goods and services selected, required by N.J.A.C. 13:36-9.8: "Charges are only for those items that

are used. If we are required by law to use any items, we will explain the reasons in writing below."

(c) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

13:36-9.17 Services provided without prior approval

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

1. State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or
2. Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or
3. The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider shall disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with a viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) To prevent the unfair or deceptive acts or practices mentioned in (a) above, funeral providers shall include on the contract, final bill, or other written evidence of the agreement or obligation given to the customer, the statement: "If you selected a funeral which requires embalming, such as a funeral with viewing you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as direct cremation or immediate burial. If we charged for embalming, we will explain why below."

13:36-9.18 Retention of documents

To prevent the unfair or deceptive acts or practices specified in this subchapter, funeral providers shall retain and make available for inspection by Board officials true and accurate copies of the price lists specified in N.J.A.C. 13:36-9.5, 9.6 and 9.7, as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by N.J.A.C. 13:36-9.8 for at least six years from the date on which the statement was signed, in conformity with N.J.A.C. 13:36-1.9.

13:36-9.19 Comprehension of disclosures

To prevent the unfair or deceptive acts or practices specified in this subchapter, funeral providers shall make all disclosures required in a clear and conspicuous manner.

SUBCHAPTER 10. CONTINUING EDUCATION

13:36-10.1 Purpose and scope

(a) The rules established by this subchapter are designed to ensure that the practitioners of mortuary science maintain the highest degree of quality in their profession.

(b) The requirements set forth under this subchapter apply to all Board licensees practicing mortuary science in the State of New Jersey as a condition of biennial licensure, except where the rules provide for exemption or waiver.

13:36-10.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Board" means the State Board of Mortuary Science of New Jersey.

"Committee" means the Credentials Committee established by the Board pursuant to N.J.A.C. 13:36-10.6.

"Person" means any person as defined in N.J.S.A. 56:8-1.

"United States Armed Forces" means the United States Army, United States Navy, United States Air Force, United States Marine Corps, and United States Coast Guard.

13:36-10.3 Minimum credit hours for biennial license renewal

(a) The Board shall not renew a mortuary science license for the biennial renewal period commencing March 1, 1999, or any following year, unless the licensee submits with the renewal application proof that he or she has completed courses of continuing professional competency of the types and number of credits specified in this subchapter. Proof of completion of the required number of professional development hours shall be in the form outlined in N.J.A.C. 13:36-10.10.

(b) By the end of each biennial licensing period, every licensee shall, as a condition of license renewal, have successfully completed 10 credit hours of continuing education courses or seminars accredited by the Board. No more than three credit hours may be obtained, during each biennial license period, in courses or seminars dealing with funeral merchandise, such as caskets, outer burial containers and clothing.

(c) Licensees shall not be permitted to carry over credit hours in excess of those required for one biennial licensure period to the next biennial licensure period.

13:36-10.4 Exemptions

(a) A person employed on a full-time basis by the Federal, State, county or municipal government who is not permitted by law or rule to actively engage in the practice of mortuary science shall be exempt from complying with the continuing education requirements of N.J.A.C. 13:36-10.3.

(b) A licensee who elects to become inactive pursuant to N.J.A.C. 13:36- 4.14 shall not be required to demonstrate compliance with N.J.A.C. 13:36- 10.3.

(c) A licensee who elects to be inactive pursuant to N.J.A.C. 13:36-4.14 shall be exempt from compliance with the continuing education requirements of N.J.A.C. 13:36-10.3 for any biennial period, or portion thereof, during which a licensee is inactive.

13:36-10.5 Waiver of continuing competency requirement

(a) The Board may, in its discretion, waive continuing competency requirements on an individual basis for reasons of hardship, such as illness or disability, or other good cause shown.

(b) Any licensee seeking a waiver of the continuing competency requirement must apply to the Board, in writing, no later than three months prior to the expiration of the biennial licensing period then in effect, and set forth with specificity the reasons for requesting the waiver. The licensee shall also provide the Board with such additional information as it may reasonably request in support of the waiver request.

(c) A person licensed for the first time by the Board shall have all continuing competency requirements waived solely for the remainder of that biennial licensing period.

(d) A licensee serving on active duty in the United States Armed Forces for a period of time exceeding 200 consecutive days in a biennial period shall have all continuing competency requirements waived for that biennial period.

13:36-10.6 Credentials Committee

(a) The Board shall appoint a Credentials Committee to assist it in establishing guidelines and criteria for the approval of continuing education courses and seminars. The Committee shall consist of three members of the Board. Members of the Committee shall serve for one year from the date of appointment, unless they are serving the unexpired term of a former member, in which event they shall serve for the remainder of the unexpired term.

(b) The Credentials Committee's responsibilities shall include:

1. Making recommendations to the Board regarding the approval of continuing education courses and seminars and the number of credit hours to be assigned to courses or seminars in satisfaction of the requirements of N.J.A.C. 13:36-10.3;

2. Developing procedures for the internal operation of the Committee; and

3. Maintaining substantive criteria for continuing education courses or seminars, which courses or seminars may include topics which:

i. Concern professional competency, ethics and legal developments relating to the practice of mortuary science;

ii. Examine and train licensees in the utilization and application of new techniques and scientific and clinical advances relating to mortuary science; and

iii. Deal with business management concepts as they relate to the delivery of efficient professional services to consumers.

13:36-10.7 Criteria for continuing competency programs

(a) A course of acceptable subject matter shall directly and materially relate to the practice of mortuary science and shall be:

1. A formal course of learning which contributes directly to the maintenance of professional competence of a licensee;

2. At least one instructional hour in duration; and

3. Conducted by a qualified instructor or workshop leader.

(b) A program provider or a licensee seeking Board approval for a course of acceptable subject matter shall submit the following to the Board:

1. Information to document the elements of (a) above, in writing, and on a form provided by the Board, including, but not limited to:

i. A detailed description of course content and estimated hours of instruction; and

ii. The curriculum vitae of the lecturer, including specific background which qualifies the individual as a lecturer of repute in the area of instruction.

13:36-10.8 Presumptive accreditation and list of accredited courses

(a) The Board shall grant credit for successful completion of the following, provided that the course or program meets the criteria of N.J.A.C. 13:36- 10.7 and that any other source of credit directly and materially relates to the practice of mortuary science:

1. College courses;
2. Continuing education courses;
3. Correspondence, televised, videotaped and other short courses/tutorials;
4. Seminars, in-house courses, workshops and technical programs at professional meetings and conferences;
5. Teaching or instruction in (a)1, 2 and 4 above; and
6. Published papers, articles or books authored by the licensee.

(b) The Board may presumptively approve continuing education courses or seminars which are accredited by any nationally-recognized association or entity whose primary function is to accredit continuing education courses or seminars regarding the practice of mortuary science anywhere in the United States.

(c) The Board shall maintain a list of courses currently approved pursuant to N.J.A.C. 13:36-10.6 and 13:36-10.7. This list shall be made available by the Executive Director to any licensee upon request.

13:36-10.9 Approval of course offerings

(a) A continuing competency provider may receive approval for a continuing competency course or program pursuant to the provisions of N.J.A.C. 13:36-10.7. Prior to offering the course or program, the provider may apply for approval. However, the provider may also apply after the event to eliminate the need for individual licensees to apply under (b) below.

(b) A licensee seeking to take a course or program which the provider has not had pre-approved by the Board may apply to the Board for pre-approval or post-approval of the course or program offering. The licensee shall submit information

similar to that which is required to be supplied by course providers pursuant to N.J.A.C. 13:36-10.7.

(c) An individual, group or association seeking course or program approval may impose a reasonable differential in course or program fees based upon membership within a group or association. However, in no event shall a sponsoring individual, group or association completely exclude from the course or program any licensee who is not a member of the group or association.

13:36-10.10 Credit hour reporting procedure

(a) At the time of application for biennial license renewal, a licensee shall provide, on a form approved by the Board, a signed statement certifying that the licensee has completed the required number of continuing education credits. The statement shall include, where applicable, the following:

1. The date of each course or program attended;
2. The number of continuing education credits claimed;
3. The title of the course and a description of its content;
4. The school, firm, or organization providing the course;
5. The instructor; and
6. The course location.

(b) Each licensee shall maintain all evidence, as set forth in (e) below, of completion of continuing education credit requirements for two biennial periods after completion and shall submit such documentation to the Board upon request.

(c) Failure to maintain records or falsification of any information submitted with the renewal application may result in an appearance before the Board and, upon notice to the licensee and the opportunity for a hearing, penalties and/or suspension of the license.

(d) The Board shall review the records of licensees from time to time, on a random basis, to determine compliance with continuing competency requirements.

(e) Documentation of continuing competency requirements shall consist of the following:

1. A log showing the type and titles of courses, programs or seminars completed, the sponsoring organizations, the locations of the courses, programs or seminars, the duration of the courses, programs or seminars, the instructors or speakers names and the number of continuing education credits claimed.

2. Attendance verification records in the form of college transcripts, completion certificates, paid receipts, and any other documents supporting evidence of attendance;

3. For publications, submission of the published article; and

4. For teaching, a statement of appropriate authority verifying the activity.

13:36-10.11 License reinstatement; activation

(a) The failure on the part of a licensee to renew his or her biennial license as required shall not relieve such person of the responsibility to maintain professional competence. At the time of application for reinstatement, the licensee shall submit satisfactory proof to the Board that he or she has successfully completed all delinquent continuing education credits acceptable to the Board up to a maximum of 25 credits.

(b) Pursuant to N.J.A.C. 13:36-4.14, any inactive licensee who elects to return to active practice of mortuary science during any biennial license renewal period, or whom the Board permits to resume active practice during any biennial period, shall submit to the Board satisfactory proof that he or she has successfully completed all delinquent continuing education credits for each biennial period during which the licensee was active or inactive, including any part thereof, up to a maximum of 25 credits.

SUBCHAPTER 11. PREPAID FUNERAL AGREEMENTS AND ARRANGEMENTS

13:36-11.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Assigned funeral insurance policy" means any insurance policy or annuity contract that is not a newly issued funeral insurance policy, but that, at the time an assignment was made of some or all of its proceeds, was intended to provide funds to the provider, whether directly or indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

"At need funeral arrangements" means funeral arrangements made with survivors or personal representatives of a person who has already died for that person's funeral.

"Board" means the State Board of Mortuary Science of New Jersey.

"Deliver" or "delivery" means the conveyance of actual control and possession of prepaid funeral goods that have been permanently relinquished by a provider, or other person, firm or corporation, or an agent thereof, to the purchaser or person paying the moneys, or personal representative of the intended funeral recipient. Delivery has not been made if the provider, or other person, firm or corporation, or an agent thereof:

1. Arranges or induces the purchaser or person paying the moneys to arrange for the storage or warehousing of prepaid funeral goods ordered pursuant to a prepaid funeral agreement, with or without evidence that legal title has passed; or

2. Acquires or reacquires actual or constructive possession or control of prepaid funeral goods after their initial delivery to the purchaser or person paying the moneys or personal representative of the intended funeral recipient.

"Funeral arrangements" means funeral and burial plans made through a provider, including the selection of plans for the furnishing of funeral goods and services pursuant to a completed plan of bodily disposition and the act of offering the opportunity to purchase or to enroll in a prepaid funeral agreement by the mortuary.

"Funeral insurance policy" means any newly issued funeral insurance policy or assigned funeral insurance policy as defined in this section.

"Funeral trust" means a commingled or non-commingled account held in a pooled trust or P.O.D. account, established in accordance with P.L. 1957, c.182 (N.J.S.A. 2A:102-13 et seq.) or P.L. 1985, c.147 (N.J.S.A. 3B:11-16 et al.), which is intended as the depository for cash payments connected with a prepaid funeral agreement.

"Guaranteed price agreement" means a prepaid funeral agreement under which, in exchange for the proceeds of a funeral trust or funeral insurance policy, the provider agrees to provide the stated goods and services in the future, at the agreed upon price regardless of whether or not the retail value of those goods and services exceeds the funds available from the funeral trust or funeral insurance policy at the time of death of the intended funeral recipient.

"Intended funeral recipient" means the person named in a prepaid funeral agreement for whose bodily disposition the prepaid funeral agreement is intended to provide. The intended funeral recipient may or may not be the purchaser.

"Licensee" means a person licensed to engage in the practice of mortuary science in the State of New Jersey.

"Newly issued funeral insurance policy" means any insurance policy or annuity contract that, at the time of issue, was intended to provide, or was explicitly marketed for the purpose of providing, funds to the provider, whether directly or

indirectly, at the time of the insured's death in connection with a prepaid funeral agreement.

"Non-guaranteed price agreement" means a prepaid funeral agreement funded with a funeral trust or funeral insurance policy, the proceeds of which the provider shall apply to the current retail value of the prepaid funeral goods and services previously selected at the time of death of the intended funeral recipient, but which agreement shall not bind the provider to provide the goods and services if the value thereof exceeds the funds available at the time of death of the intended funeral recipient.

"Payable on death account" or "P.O.D. account" means an account payable on request to the purchaser or intended funeral recipient of a prepaid funeral agreement during the lifetime of the intended funeral recipient and on his or her death, to a provider of funeral goods and services.

"Pooled trust" means a pooled trust account established pursuant to P.L. 1985, c.147 (N.J.S.A. 3B:11-16 et al.).

"Preneed funeral arrangements" means funeral arrangements made with an intended funeral recipient or his or her guardian, agent or next of kin, for the funeral of the intended funeral recipient.

"Prepaid funeral agreement" means a written agreement and all documents related thereto made by a purchaser with a provider prior to the death of the intended funeral recipient, with which there is connected a provisional means of paying for preneed funeral arrangements upon the death of the intended funeral recipient by the use of a funeral trust or funeral insurance policy, made payable to a provider and in return for which the provider promises to furnish, make available or provide the prepaid funeral goods or services, or both, specified in the agreement, the delivery of which occurs after the death of the intended funeral recipient.

"Prepaid funeral goods" means personal property typically sold or provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, caskets or the primary containers, cremation or transportation containers, outer burial containers, vaults, as defined in N.J.S.A. 8A:1-2, memorials as defined in N.J.S.A. 8A:1-2, funeral clothing or accessories, monuments, cremation urns, and similar funeral or burial items, which goods are purchased in advance of need and which will not be delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral goods shall not mean the sale of interment spaces or any related personal property offered or sold by a cemetery company as provided for in N.J.S.A. 8A:1-1 et seq.

"Prepaid funeral services" means those services typically provided in connection with a funeral, or the final disposition of human remains, including, but not limited to, funeral direction services, embalming services, care of human remains, preparation of human remains for final disposition, transportation of human remains, use of facilities or equipment for viewing human remains, visitation, memorial services or services which are used in connection with a

funeral or the disposition of human remains, coordinating or conducting funeral rites or ceremonies and similar funeral or burial services, including limousine services provided in connection therewith, which services are purchased in advance of need and which will not be provided or delivered until the death of the intended funeral recipient named in a prepaid funeral agreement. Prepaid funeral services shall not mean the sale of services incidental to the provision of interment spaces or any related personal services offered or sold by a cemetery company as provided for in N.J.S.A. 8A:1-1 et seq.

"Provider" means a person, firm or corporation duly licensed and registered pursuant to the "Mortuary Science Act," P.L. 1952, c.340 (N.J.S.A. 45:7-32 et seq.) to engage in the business and practice of funeral directing or mortuary science, or an individual serving as an agent or employee thereof and so licensed:

1. Operating a duly registered mortuary in accordance with P.L. 1952, c.340 (N.J.S.A. 45:7-32 et seq.) and the rules promulgated thereunder;
2. Having his or its business and practice based within the physical confines of the registered mortuary; and
3. Engaging in the practice of making preneed funeral arrangements, including, but not limited to, offering the opportunity to purchase or enroll in prepaid funeral agreements.

"Purchaser" means the person named in a prepaid funeral agreement who purchases the prepaid funeral goods and services to be provided thereunder. The purchaser may or may not be the intended funeral recipient. If the purchaser is different than the intended funeral recipient, it is understood that the relationship of the purchaser to the intended funeral recipient includes a means to provide administrative control over the agreement on behalf of the intended funeral recipient.

"Retail installment contract" means an agreement to pay with interest the purchase price of goods or services in two or more installments over a period of time.

"Statement of funeral goods and services" means the itemized written statement required to be given to each person making funeral arrangements in accordance with the regulations of the Federal Trade Commission (16 C.F.R. 453.2) and the Board (N.J.A.C. 13:36-1.8 and 9.8).

13:36-11.2 License and registration required; statement of funeral goods and services and preneed arrangement required; price lists; compliance with at need laws

(a) No person, firm or corporation shall sell, offer to sell, or make, or offer to make preneed funeral arrangements or prepaid funeral agreements unless that person, firm or corporation is licensed and registered pursuant to the Mortuary

Science Act, N.J.S.A. 45:7-32, to engage in the business and practice of mortuary science.

(b) Only a provider whose business and practice is located within the physical confines of a mortuary registered by the Board may make prepaid funeral agreements or preneed funeral arrangements, although providers may make prepaid agreements or preneed arrangements outside the actual confines of a registered mortuary.

(c) This section shall not be construed to prohibit an otherwise qualified person, firm or corporation from acting as a provider operating under a trade name or other assumed name or through a subsidiary of a corporation duly licensed and registered pursuant to the Mortuary Science Act, N.J.S.A. 45:7- 32, to engage in the business and practice of mortuary science.

(d) No provider shall offer, enter into, or offer to enter into a prepaid funeral agreement, whether funded by a funeral trust or funeral insurance policy, unless at the time of said transaction the provider furnishes the purchaser with:

1. A prepaid funeral agreement as defined and described by N.J.A.C. 13:36-11.1, 11.3 and 11.4;

2. A separate statement of funeral goods and services for the intended funeral recipient describing and itemizing the prepaid funeral goods and services agreed upon in accordance with N.J.A.C. 13:36-1.9 and 9.8, whether or not the prepaid funeral agreement itself itemizes the funeral goods and services to be furnished at the time of need; and

3. The price lists as required by N.J.A.C. 13:36-9.5, 9.6 and 9.7 to be offered and provided to a purchaser at the time of an at need funeral arrangement.

(e) A provider shall comply with all of the requirements provided by statute and this subchapter for the making of an at need funeral arrangement when making or offering to make prepaid funerals or preneed funeral arrangements.

(f) All newly issued funeral insurance policies sold for the purpose of funding a prepaid funeral agreement shall:

1. Be sold by an individual who is licensed to sell insurance pursuant to N.J.S.A. 17:22A-1 et seq.; and

2. Fully comply with all relevant insurance laws of this State including but not limited to, N.J.S.A. 17B:17-5.1.

13:36-11.3 Contents of a prepaid funeral arrangement

(a) Every prepaid funeral agreement shall be signed by the provider, the purchaser or the intended funeral recipient or the intended funeral recipient's

guardian, agent or next of kin, shall be in writing and, together with the requisite separate statement of goods and services required pursuant to N.J.A.C. 13:36-11.2, shall be provided to the purchaser at the time of entering into a prepaid funeral agreement. Every written prepaid funeral agreement shall, at a minimum, include the following information:

1. The name and license number of the provider;
2. The name, address, and telephone number of the provider's registered mortuary;
3. The name and address of the purchaser and, if different, the name of the intended funeral recipient;
4. The amount and method of the funding for the prepaid funeral agreement and a statement specifically indicating whether the prepaid funeral agreement is:
 - i. A guaranteed price agreement, including those goods and services guaranteed; or
 - ii. A non-guaranteed price agreement;
5. The name and location of the bank or pooled trust in which the prepaid moneys will be deposited if the funeral agreement is funded by a funeral trust;
6. If a funeral insurance policy, the policy number, if known, and the name and address of:
 - i. The insurance company;
 - ii. The beneficiary of the policy;
 - iii. The purchaser of the policy; and
 - iv. The intended funeral recipient, if different from the purchaser;
7. Notice that all funeral arrangements are revocable and that all funeral funding arrangements are severable from those funeral arrangements by the purchaser if alive, and if not, then by the intended funeral recipient where they are different persons. Upon the death of both the purchaser and the intended funeral recipient, the next of kin of the intended funeral recipient, in the order provided by N.J.S.A. 8A:5-18, shall have the right to revoke the funeral arrangements and to sever the funeral funding arrangements from the funeral arrangements;
8. Notice that a prepared funeral agreement may be funded by an irrevocable trust or irrevocable funeral insurance policy when the intended funeral recipient is an aged, blind or disabled applicant for, or recipient of, the public assistance programs provided for by N.J.S.A. 44:7-85 et seq., or is a similarly situated individual who reasonably anticipates applying for such assistance within six months from the execution of the prepaid funeral agreement.

9. Notice that a prepaid funeral agreement funded by an irrevocable trust or an irrevocable funeral insurance policy shall be nonrefundable during the lifetime of the intended funeral recipient;

10. Notice that, if the intended funeral recipient's death occurs in a location other than that served by the provider, alternate funeral arrangements may be required unless otherwise specified;

11. Notice that a provider may substitute goods or services of equal quality, value and workmanship if those specified in the funeral agreement are unavailable at the time of need. Any resulting change in price will be reflected on a revised statement which shall be furnished at the time of need;

12. Notice that the intended funeral recipient shall automatically assume the same legal rights as the purchaser to administer a prepaid funeral arrangement if the purchaser predeceases the intended funeral recipient;

13. Notice that upon the death of the intended funeral recipient, the provider shall calculate the current retail prices of the prepaid funeral arrangements, and:

i. In the case of a non-guaranteed prepaid funeral agreement, if there are insufficient funds to pay for the current retail prices of the prepaid funeral goods and services requested, the provider shall consult with the appropriate representative of the intended funeral recipient for the supplementation of funds or modification of the funeral arrangements set forth in the agreement prior to the provider's performance under the agreement;

ii. In the case of any agreement funded through a funeral trust, all surplus funds shall be paid to the purchaser, if alive, and if not, then to the personal representative of the estate of the deceased purchaser;

iii. In the case of an agreement funded through any funeral insurance policy, all surplus funds shall be paid to the named beneficiary of the funeral insurance policy;

14. Notice that if a prepaid funeral agreement is a guaranteed price agreement, the provider is liable for the price guarantee, and neither the issuer of a funeral insurance policy nor the trustee of a funeral trust is liable; and

15. Notice that the provider shall present a final and comprehensive bill to the legal representative of the deceased funeral recipient upon completion of performance under the prepaid funeral agreement.

13:36-11.4 Additional requirements of prepaid funeral agreements funded by funeral insurance policies; signing of insurance documents; providers not beneficiaries

(a) A provider who funds a prepaid funeral agreement by selling a newly issued funeral insurance policy shall conspicuously and in plain language disclose to the purchaser:

1. In boldface, that the provider will receive a commission or other remuneration based on the transaction;
2. That the provider is a duly licensed insurance producer in the State of New Jersey and is an agent of the insurance company issuing the policy;
3. The license number of the provider currently on file with the New Jersey Department of Banking and Insurance;
4. That cancellation of the prepaid funeral agreement shall not result in a refund of premiums paid;
5. That cancellation of the prepaid funeral agreement shall not cancel or otherwise invalidate the newly issued funeral insurance policy, although cancellation may not result in a refund of all premiums paid; and
6. That cancellation or lapse of the newly issued insurance policy, or withdrawals from, or loans against the proceeds or the cash value of the policy, may render the available funds inadequate to pay for the arrangements as originally intended and shall void any price guarantees.

(b) The provider who funds a prepaid funeral agreement by selling a newly issued funeral insurance policy shall sign all documentation pertaining to the funeral insurance policy application and goods and services in the presence of the purchaser.

(c) No provider, while acting in the capacity of a provider or licensee of the Board, shall be named as a beneficiary of a funeral insurance policy, except that nothing in this section shall be construed to prohibit the assignment of the proceeds of the policy to a provider as final payment for a funeral bill, or any other mechanism that provides payment to a provider for the goods or services rendered; in the case of such assignment or mechanism, any excess proceeds shall be paid to the named beneficiary.

13:36-11.5 Funeral trust converted to funeral insurance policy

(a) A provider shall not replace a funeral trust with a newly issued funeral insurance policy unless and until the provider obtains the written consent of the purchaser. The written consent shall be signed by the purchaser and shall thoroughly advise the purchaser in plain language of the material differences between the original funeral trust and newly issued funeral insurance policy. The written consent shall conspicuously disclose in boldface the provider's earning of a commission based upon the transaction.

(b) The provider shall maintain the documentation required by (a) above pursuant to N.J.A.C. 13:36-11.16.

13:36-11.6 Irrevocable funeral agreements

(a) Notwithstanding the provisions of N.J.A.C. 13:36-11.3(a)8, and in accordance with N.J.S.A. 2A:102-16.1, a prepaid funeral agreement may provide that its funding, whether in the form of a funeral trust or a funeral insurance policy, is irrevocable during the lifetime of the intended funeral recipient, provided that the intended funeral recipient is:

1. An aged, blind or disabled applicant for, or recipient of, benefits pursuant to the Supplemental Security Income program (SSI) (N.J.S.A. 44:7- 85 et seq.), a Medicaid program (N.J.S.A. 30:4D-1 et seq.), or General Assistance (N.J.A.C. 10:85); or
2. An aged, blind or disabled person who reasonably anticipates applying for, or receiving, the benefits provided by SSI, Medicaid or General Assistance within six months of the date of the signing of the prepaid funeral agreement.

(b) No provider shall establish an irrevocable prepaid funeral agreement knowing that the intended funeral recipient:

1. Is not, or shall not, become eligible to receive the public assistance referred to in (a) above; or
2. Does not intend to apply for such public assistance.

(c) No provider shall establish an irrevocable prepaid funeral agreement knowing or intending that the personal representative, estate or beneficiary of an intended funeral recipient shall receive a refund at the time of need, except that this prohibition does not include the expectation of an accumulation of interest or earnings on the corpus of the trust or insurance policy.

(d) No provider shall knowingly solicit or induce any person to execute an irrevocable prepaid funeral agreement pursuant to this section with the intent to collect or charge more than the fair market value of the funeral goods or services solicited.

(e) A provider shall immediately notify in writing the appropriate social services agency or agencies if at, or subsequent to, the time of need the personal representative or estate of a funeral recipient, or if known by the provider the beneficiary, in the case of a funeral insurance policy, receives a refund from an irrevocable prepaid funeral agreement in excess of \$500.00.

13:36-11.7 Pooled trusts

(a) Moneys used to fund prepaid funeral agreements may be deposited into a pooled trust account in a Federally insured State or Federally chartered bank, savings bank or savings and loan association pursuant to a written trust agreement, the beneficiaries of which shall be the purchasers, or intended funeral recipients, if different persons. Any such trust agreement shall conspicuously disclose in writing to the purchaser or intended funeral recipient, prior to the acceptance of any moneys by the trustees:

1. The right to immediately withdraw on demand any moneys placed in such trust, plus accrued interest;

2. That the purchaser or the intended funeral recipient shall receive periodic statements not less than once per year reflecting the amount of principal and accrued interest, if any, in the trust;

3. The amount or rate of any commissions to be lawfully taken; and

4. The identities and business addresses of each of the trustees of the pooled trust, except in the case of trustees selected by a bona-fide nonprofit organization, in which instance the notice of the availability of the trust document shall suffice.

(b) The provider shall notify the purchaser or intended funeral recipient of any change in the amount or rate of commission within 30 days.

13:36-11.8 Commissions for trustees of pooled trust

The trustees of a pooled trust fund for the benefit of at least 200 purchasers or intended funeral recipients shall be entitled to a commission not to exceed one percent per annum of the corpus of the trust fund, which shall be paid out of any income, and in no event shall the trustees invade the corpus of the trust funds. Any expenses incurred in the administration of such a trust may be recouped from this commission, and such expenses shall not be deducted from any other earnings of the trust.

13:36-11.9 Cash advance items; application of interest income

(a) If a prepaid funeral agreement is a guaranteed price agreement and the provider accepts funds for any cash disbursements at the time that the prepaid funeral agreement is made, then at the time of need, the provider shall first apply the interest earned by the prepaid cash disbursements to any increased costs of those disbursements, and shall refund any surplus funds or interest on the disbursements to the purchaser or legal representative of the intended funeral recipient or apply such surplus to any other use as directed by such persons.

(b) A provider shall not apply any surplus derived from the cash disbursement portion of a guaranteed price agreement to any other part of the agreement without the written consent of the purchaser or legal representative of the intended funeral recipient.

13:36-11.10 Periodic statements of status of funeral trusts

A provider shall immediately furnish to a purchaser any periodic statements received from the trustee of a funeral trust which reflect the amount of principal and accrued interest, if any, in the trust.

13:36-11.11 Purchaser to sign completed documentation

All documentation which is required to be signed by a purchaser of a prepaid funeral agreement shall be completed and signed by the provider prior to the purchaser signing such documentation. In no event shall such documentation be signed in blank by the purchaser.

13:36-11.12 Deposit of preneed funds; commingling of funds prohibited; proof of establishment of trust

(a) Providers shall deposit all moneys received in connection with the establishment of a prepaid funeral agreement in a funeral trust or with the appropriate insurance company within 30 days of the receipt of such moneys by the provider or licensee.

(b) A provider may temporarily deposit all moneys received in connection with the establishment of a prepaid funeral agreement in a separate non-interest bearing account established and used exclusively for the deposit of said moneys, until the moneys are transferred to the funeral trust or insurance company in accordance with the requirements of (a) above.

(c) No provider or licensee shall commingle any funds received in payment for a prepaid funeral agreement or preneed arrangement in any business or personal checking or banking account, or in any other place other than where authorized by (a) and (b) above.

(d) The provider shall forward to the purchaser evidence of the establishment of a funeral trust except when the funds have been deposited in a pooled trust which itself provides purchasers with notification of the establishment of a funeral trust.

(e) No provider or licensee acting on behalf of a provider shall apply any funds, whether principal or interest, from a prepaid funeral trust or funeral insurance policy to pay for any funeral goods or services or for any other expenses or use until the death of the intended funeral recipient except as provided by N.J.S.A. 3B:11-16 and N.J.A.C. 13:36-11.7, Pooled trusts.

13:36-11.13 Return of prepaid moneys upon revocation or impossibility to perform; transfer of preneed arrangements or prepaid agreements; presumption of intent

(a) Any request by a purchaser or other authorized person for revocation or for a refund of a funeral trust fund shall be fully complied with by the provider within 14 days from receipt of the request.

(b) Any request by a purchaser or other authorized person for severing or cancellation of the funding of a newly issued funeral insurance policy shall be forwarded in writing by the provider to the appropriate insurance company no later than three days from receipt of the request.

(c) Any request by a purchaser or other authorized person to assign or to transfer a preneed funeral arrangement or the funding for a prepaid funeral agreement to a new provider and registered mortuary shall be fully complied with by the provider within 10 days of the request.

(d) The new provider (as described in (c) above) shall comply with all of the requirements of this subchapter and the preneed statutes regarding the establishment and maintenance of the preneed funeral agreement and preneed funeral arrangement, including the immediate making of a new prepaid funeral agreement and preneed funeral arrangement.

(e) If a provider is unable to furnish prepaid goods or services requested due to revocation of a prepaid funeral agreement or funding therefore, or is unable to perform due to the impossibility of performance:

1. The moneys used to fund a newly issued funeral insurance policy shall be paid to the named beneficiary of the policy; or

2. The moneys used to fund a funeral trust shall be refunded within 10 days to:

i. The purchaser, if alive; or

ii. The estate or personal representative of the purchaser.

(f) In the case of a funeral agreement funded by a funeral insurance policy, the provider shall make all necessary inquiries of the insurance company after receiving a request for severance or cancellation from an authorized party.

(g) A provider shall be entitled to presume that at the time of need, any prepaid funeral agreement and preneed funeral arrangement on file are those intended, unless the funeral recipient's personal representative, in the order provided in N.J.S.A. 8A:5-18, actually makes changes in said agreement or arrangements.

13:36-11.14 Other prohibited acts

(a) No provider or licensee or person, firm, or corporation acting on behalf of a provider or licensee, including solicitors, agents, canvassers, employees or other persons acting on behalf of such person, firm or corporation, for the purpose of selling, contracting or offering to sell prepaid funeral agreements or preneed funeral arrangements on behalf of said provider or licensee, shall:

1. Directly or indirectly solicit persons in hospitals, rest homes, nursing homes or similar health care facilities by telephone or in person without first having been specifically requested to do so by that person;

2. Directly or indirectly employ any agent, employee, assistant, independent contractor or other person to solicit persons in hospitals, rest homes, nursing homes or similar health care facilities by telephone or in person without first having been specifically requested to do so by that person;

3. Solicit relatives of persons whose death is apparently impending or whose death has recently occurred for the purpose of providing any of those services for that person;

4. Solicit, accept, offer to pay or pay any commission, bonus or rebate in consideration of recommending or causing any person to use the services of a particular funeral director, or the services of a particular crematory, mausoleum or cemetery;

5. Solicit persons at their residences in person or by telephone unless that solicitation is in response to a previous request for or expression of interest in a funeral director's services made by the person solicited or by a member of that person's family; or

6. Accept any consideration for the establishment and deposit of any moneys in a funeral trust, including, but not limited to, a commission, rebate, discount, or direct or indirect price reduction on merchandise.

(b) Nothing in (a) above shall be construed to restrict the right of a provider or an agent or employee of a provider, to communicate, by direct mail or in any other way not specifically prohibited by this section, with persons or provide them with information regarding the services of the provider, or to solicit the business of any person responding to that communication and explicitly requesting further information by personal visit or telephone, or otherwise initiating further discussion of those services, or to provide services or information to persons in connection with services previously rendered.

(c) No provider or person acting on behalf of a provider shall, in the context of prepaid funeral agreements or preneed arrangements, advertise "discounts," "rebates" or other price reduction incentives:

1. Which are not actual reductions of the retail prices of a provider's current price lists; or

2. Which are based solely on a funeral insurance policy's premium rate tables.

(d) No provider shall charge prices at the time of making a prepaid funeral agreement which exceed those prices which appear on the provider's current price lists which are provided to consumers at the time of need pursuant to N.J.A.C. 13:36-9.

(e) No provider shall, in offering to provide preneed funeral arrangements or prepaid funeral agreements, use the term "trust" or "trust funded" in any name, advertisement or solicitation in a misleading manner.

(f) No provider shall fund or finance a preneed funeral arrangement or a prepaid funeral agreement through a retail installment contract or credit life insurance.

(g) No provider shall finance a preneed funeral arrangement or prepaid funeral agreement by any means other than a funeral trust or funeral insurance policy as authorized by these regulations and the preneed statutes.

(h) No provider shall knowingly sell, offer to sell or solicit any insurance product other than a funeral insurance policy in connection with a prepaid funeral agreement as provided in this subchapter and by N.J.S.A. 17B:17-5.1, for the purpose of prepaying or subsidizing, in whole or in part, directly or indirectly, the future funeral expenses of any person.

(i) Any agreement to waive any portion of this subchapter shall render the agreement voidable by the purchaser and shall be a violation of this subchapter.

13:36-11.15 Presumption; aiding and abetting; vicarious liability; duty to report violations

(a) Any provider or licensee acting on behalf of the provider shall be conclusively presumed to know his, her or its obligations relevant to the deposit, maintenance, application and refund of funeral trust funds and funeral insurance policies.

(b) Any provider or any person who knowingly aids, abets or otherwise assists any other person to violate any of the provisions of the preneed statutes or this subchapter, shall be equally as culpable as a principal, and shall be subject to discipline by the Board as a principal.

(c) Any provider shall be liable for any acts performed by any other person in any matter involving the preneed statutes or this subchapter, provided that the provider authorizes said person to act in his, her or its stead or holds out said other person to the public as apparently authorized to act in his, her or its stead.

(d) Any licensee who is actively engaging in the business of mortuary science as a provider or an employee of a provider who has knowledge of any violation of this subchapter or of the preneed statutes by any licensee, person, firm or corporation, shall immediately report such violation to the Board and shall provide to the Board all evidence and knowledge of said violation.

13:36-11.16 Preneed ledgers of active prepaid funeral agreements and preneed funeral arrangements; maintenance of records of prepaid agreements and preneed arrangements; compilation of preneed ledger; biennial registration

(a) Every provider shall maintain in his, her or its registered mortuary, in a single identifiable and accessible location, a ledger of all active prepaid funeral arrangements (the "Preneed Ledger"), provided, however, that any provider who operates more than one registered mortuary may keep all preneed ledgers so maintained in one location.

(b) The Preneed Ledger may be kept manually or electronically, and if kept electronically, updated hard copies of the Ledger shall be printed at least once per month.

(c) The Preneed Ledger shall contain current data and shall be revised and updated at least once per month. The Preneed Ledger shall, at a minimum, contain:

1. The name and address of each purchaser, and if different, the name and address of each intended funeral recipient;
2. The amount of moneys prepaid, including any periodic payments made by the purchaser and the dates of each payment;
3. An identification of the agreement as revocable or irrevocable;
4. The value and balance of each prepaid funeral trust fund or value of each funeral insurance policy, as of the most recent transaction, annual statement or accounting; and
5. The location of all prepaid funds, including:
 - i. The number of any bank account;
 - ii. The location of any passbook;
 - iii. The name of any insurance company receiving funds in payment for a funeral insurance policy; and
 - iv. The policy number, when available.

(d) All other records of prepaid funeral agreements, including statements of goods and services in connection therewith and any other writings or notifications, which are required to be made by this subchapter or by the preneed statutes, shall be maintained in a single identifiable and accessible location in the registered mortuary where such prepaid funeral agreements were made.

(e) The records of prepaid funeral agreements referred to in (d) above shall accurately reflect:

1. The amount of refunds, if any, including the name and address of the recipient of the refund and the amount thereof;

2. Any assignment or transfer of prepaid funeral agreements to any other registered mortuaries prior to the time of need, including the name of the receiving mortuaries and the dates of said transfers;

3. The death of an intended funeral recipient, including:

i. The date of death;

ii. The cost of the at need funeral arrangement;

iii. The original statement of funeral goods and services and any revised statement;

iv. The amount of refund or additional cost if any; and

v. The name of any person receiving a refund or paying any additional moneys.

(f) The Preneed Ledger of active prepaid funeral agreements required pursuant to (a) above shall be maintained continuously for as long as the mortuary remains in business, regardless of changes in registration, ownership, managers, deaths of licensees, transfers to new locations or bankruptcy. There shall be no deletions of active prepaid funeral agreements from the Preneed Ledger for any reason other than mistaken entries. When a mistaken entry is corrected, the correction shall include the date of said correction.

(g) All other records made and maintained pursuant to (d) above shall be retained for a period of six years from the date of death of the intended funeral recipient, transfer or assignment, or refund or revocation.

(h) All records required to be maintained by this section shall be made available by the provider to any authorized representative of the Division of Consumer Affairs and, upon request or as required by this subchapter, to the Board and its Executive Director.

(i) By April 5, 1998, all providers having active prepaid funeral agreements shall compile and complete the Preneed Ledger required by (a) above. The Preneed Ledger shall contain all active prepaid funeral agreements as of that date.

(j) The licensee shall certify in the biennial renewal application of all registered mortuaries that all records maintained pursuant to this section are in existence and are available for inspection.

13:36-11.17 Records provided to the Board and to successors in interest

(a) A copy of the Preneed Ledger required to be maintained by N.J.A.C. 13:36-11.16(a) shall be provided to the Executive Director of the Board by the manager or licensee in charge immediately upon:

1. The discontinuation of business in accordance with N.J.A.C. 13:36-5.14;
2. Within 10 days of the death of a licensee or owner in accordance with N.J.A.C. 13:36-4.12; or
3. Immediately upon the filing of any form of bankruptcy by the provider or registered mortuary.

(b) Upon request, any records required to be maintained by N.J.A.C. 13:36-11.16 shall be made available to the Board and its Executive Director upon:

1. Any change in ownership of a registered facility as defined by N.J.A.C. 13:36-4.5;
2. Any change of managers as defined by N.J.A.C. 13:36-4.8(c) and (d);
3. The transfer of a funeral establishment to a new location as defined by N.J.A.C. 13:36-5.13; or
4. For any other reason deemed appropriate by the Board or its Executive Director.

(c) Whenever the records required to be maintained by N.J.A.C. 13:36-11.16 are moved from a provider's existing registered facility, the provider shall notify the Board immediately of the new location of the records and of the identity of the person responsible for their safekeeping.

(d) The records required to be maintained by N.J.A.C. 13:36-11.16 shall be made available by the manager or licensee in charge to any person or entity assuming a new ownership interest, or a part thereof, or any person newly assuming the position of manager, at least 10 days prior to such change in ownership or manager, unless otherwise mutually agreed upon by the parties.

(e) When a provider or registered mortuary files for any form of bankruptcy the manager or licensee in charge shall immediately furnish the records required to be maintained pursuant to N.J.A.C. 13:36-11.16 to the trustee in bankruptcy, together with a notification that the Preneed Ledger has been provided to the Board as required by (a) above.

13:36-11.18 Notification of purchaser of transfer of ownership

(a) Whenever a mortuary is required to obtain a new certificate of registration, the new manager or licensee in charge shall notify in writing the owners of all prepaid funeral agreements then in effect of their options to elect to maintain their prepaid funeral agreements at the present location or to transfer or assign their

prepaid funeral agreements and preneed funeral arrangements to a different mortuary within 30 days of the change of ownership, or death of a licensee or owner.

(b) The notice required by (a) above shall advise the owners of all prepaid funeral agreements that they may:

1. Request a refund of any prepaid moneys from a funeral trust, except in the case of irrevocable prepaid funeral arrangements; or

2. Sever the funding of a funeral insurance policy from a prepaid funeral agreement.

(c) Proof that the notice required by (a) above was delivered shall be furnished to the Board by the new manager or licensee in charge within 10 days of said delivery.

13:36-11.19 Notification of dissolution or bankruptcy

(a) Whenever a registered mortuary discontinues business or files for bankruptcy, the manager or licensee in charge shall provide written notice of said discontinuation or bankruptcy to all purchasers of active prepaid funeral agreements.

(b) The notice required by (a) above shall advise the purchasers of the prepaid funeral agreements and preneed funeral arrangements that they may:

1. Revoke the funding of their prepaid agreements and receive a refund, except in the case of irrevocable funding;

2. Sever the funding of a funeral insurance policy from the prepaid agreement; or

3. Transfer or assign their prepaid agreements and preneed arrangements to another registered mortuary.

(c) The notice required by (a) above shall be provided as soon as possible prior to the discontinuation of business or bankruptcy, but no later than five days before the occurrence.

(d) Proof that the required notice was delivered shall be immediately furnished to the Board by the manager or licensee in charge.

**New Jersey Administrative Code
Title 13, Chapter 45C.
Uniform Regulations**

SUBCHAPTER 1. LICENSEE DUTY TO COOPERATE AND TO COMPLY WITH BOARD ORDERS

13:45C-1.1 Applicability, scope and definitions

(a) This subchapter shall apply to all licensees of any board, committee or sub-unit within the Division of Consumer Affairs.

(b) For the purpose of this subchapter, "licensee" shall mean any licensee, permittee, certificate holder or registrant of:

1. The Division of Consumer Affairs;
2. Any professional or occupational licensing board within the Office of Professional/Occupational Boards and any committee, or other subunit of a board or committee located within the Division;
3. The Office of Consumer Protection; or
4. The Legalized Games of Chance Control Commission.

13:45C-1.2 Licensee's duty to cooperate in investigative inquiries

(a) A licensee shall cooperate in any inquiry, inspection or investigation conducted by, or on behalf of, a board, the Director or the licensee's licensing agency into a licensee's conduct, fitness or capacity to engage in a licensed profession or occupation where said inquiry is intended to evaluate such conduct, fitness or capacity for compliance with applicable statutory or regulatory provisions.

(b) A licensee's failure to cooperate, absent good cause or bona fide claim of a privilege not identified in N.J.A.C. 13:45C-1.5 as unavailable, may be deemed by the board, the Director, or the licensing agency to constitute professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) or the agency's enabling act and thus subject a licensee to disciplinary action pursuant to N.J.S.A. 45:1-21(h) or the agency's enabling act.

13:45C-1.3 Specific conduct deemed failure to cooperate

(a) The following conduct by a licensee may be deemed a failure to cooperate and, therefore, professional or occupational misconduct and grounds for suspension or revocation of licensure:

1. The failure to timely respond to an inquiry to provide information in response to a complaint received concerning licensee conduct;
2. The failure to timely provide records related to licensee conduct;
3. The failure to attend any scheduled proceeding at which the licensee's appearance is directed. In the event that a licensee elects to retain counsel for the purpose of representation in any such proceeding, it shall be the licensee's responsibility to do so in a timely fashion. The failure of a licensee to retain counsel, absent a showing of good cause therefor, shall not cause an adjournment of the proceeding;
4. The failure to timely respond or to provide information requested pursuant to a demand under N.J.S.A. 45:1-18 or other applicable law or to provide access to any premises from which a licensed profession or occupation is conducted. Included within this paragraph shall be the failure to respond to any demand for statement or report under oath, the failure to permit the examination of any goods, ware or item used in the rendition of the professional or occupational

service and the failure to grant access to records, books or other documents utilized in the practice of the occupation or profession;

5. The failure to answer any question pertinent to inquiry made pursuant to N.J.S.A. 45:1-18 or other applicable law unless the response to said question is subject to a bona fide claim of privilege;

6. The failure to make proper and timely response by way of appearance or production of documents to any subpoena issued pursuant to N.J.S.A. 45:1-18 or as may otherwise be provided by law; or

7. The failure to provide to the Board, the Director or the licensing agency timely notice of any change of address from that which appears on the licensee's most recent license renewal or application.

13:45C-1.4 Failure to comply with Board orders as professional or occupational misconduct

The failure of a licensee to comply with an order duly entered and served upon the licensee or of which the licensee has knowledge shall be deemed professional or occupational misconduct.

13:45C-1.5 Unavailability of privileges in investigative or disciplinary proceedings

(a) In any investigative inquiry conducted pursuant to N.J.S.A. 45:1-18 or in any disciplinary proceeding conducted pursuant to N.J.S.A. 45:1-21, or as may otherwise be authorized by law, the physician-patient privilege, psychologist-patient privilege, marriage and family therapist-client privilege, professional counselor-client privilege, associate counselor-client privilege, social worker-client privilege and the alcohol and drug counselor-client privilege shall be unavailable.

(b) Any statements or records otherwise subject to a claim of the stated privileges which may be obtained by the Board, its agent or the Attorney General pursuant to N.J.S.A. 45:1-18 shall remain confidential and shall not be disclosed unless so ordered by a court of competent jurisdiction, the appropriate licensing board or the Office of Administrative Law in a contested case.

13:45C-1.6 Maintenance of and access to statements, records or other information that is subject to a privilege declared unavailable

(a) Any statements, records or other information which may be subject to any privilege declared unavailable in this subchapter shall be maintained in a secure place and manner by:

1. The evidence custodian within the Division of Consumer Affairs, Enforcement Bureau;

2. The professional or occupational licensing board and the committee or other subunit of a board or committee located within the Division which has a direct connection with, or a need for access to, the matter to which the statements, records or other information pertain; or

3. A Deputy Attorney General.

(b) Except as may be otherwise ordered as provided in the subchapter, access to statements, records or other information shall be afforded only to employees of the Attorney General, the Enforcement Bureau, or the Board or other subunit of the Division having a direct connection with, or a need for access to, the matter to which the statement, records or other information pertain.

(c) The statements, records or other information shall be retained only for the period of time during which an investigation remains open or until the completion of all administrative or judicial proceedings relating thereto, at which time they shall be returned to the licensee or other person from whom they were obtained.

In the absence of such licensee or other person, the statements, records or other information shall be returned to the patient, where appropriate.